TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [illegible] 1904.

No. 39.

BALTIMORE SHIPBUILDING AND DRY DOCK COMPANY OF BALTIMORE CITY, PLAINTIFF IN ERROR,

vs.

THE MAYOR AND CITY COUNCIL OF BALTIMORE ET AL.

IN ERROR TO THE COURT OF APPEALS OF THE STATE OF MARYLAND.

FILED MAY 26, 1904.

(15,[illegible])

(18,936.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1903.

No. 286.

BALTIMORE SHIPBUILDING AND DRY DOCK COMPANY OF BALTIMORE CITY, PLAINTIFF IN ERROR,

vs.

THE MAYOR AND CITY COUNCIL OF BALTIMORE ET AL.

IN ERROR TO THE COURT OF APPEALS OF THE STATE OF MARYLAND.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., JANUARY 29, 1904.

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1 January Term, 1903.

STATE OF MARYLAND, *sct:*

At a court of appeals for the State of Maryland, begun and held for the said State, at the city of Annapolis, on the second Monday of January, being the twelfth day of said month in the year of our Lord, one thousand nine hundred and three and of the Independence, of the United States of America, the one hundred and twenty-seventh.

Chief Judge McSherry, Judges Pearce, Page, Fowler, Boyd, Jones, Briscoe, Schmucker. Thomas Parran, clerk.

Among other, were the following proceedings, to wit:

2 *Petition of Allowance of Writ of Error and Order Thereon.*

Filed April 22nd, 1903.

In the Supreme Court of the United States.

BALTIMORE SHIPBUILDING AND DRY DOCK Company of Baltimore City *vs.* MAYOR AND CITY COUNCIL OF BALTIMORE and Conway W. Sams, Solomon H. Freeburger, and Oscar Leser, Judges of Appeal Tax Court.	In the Court of Appeals of Maryland.

Petition for allowance of writ of error.

To the Honorable James McSherry, chief judge of the court of appeals of Maryland:

3 The petition of the Baltimore Shipbuilding and Dry Dock Company of Baltimore City, by Taylor and Keech and Leon E. Greenbaum, its counsel of record, respectfully show- to your honor:

First. That as appears in the above entitled proceedings an assessment for the purposes of taxation by the State of Maryland and mayor and city council of Baltimore, has heretofore been laid, by the mayor and city council of Baltimore, and the judges of the appeal tax court of said city, upon certain lands and real property, held by and in the possession of said appellant corporation, under and in pursuance of the terms and provisions of a certain act of Congress of the United States, approved June 19, 1878, the making of which assessment was resisted by said appellant in and before the said appeal tax court at the time the same was made, for the reasons and on the grounds set forth in the petition of appeal, and

the amendment thereof, filed in the Baltimore city court, according to statutes in such cases made and provided, and from the
4 making of which by the said appeal tax court said appellant appealed to the Baltimore city court, as by law provided, which latter court affirmed the action of said appeal tax court in so far as it held said lands and real property to be assessible for the purposes of State and municipal taxation, and that from the order of said Baltimore city court, affirming, in the manner aforesaid, the assessment made upon said lands by said appeal tax court, said appellant did appeal to this honorable court, the highest court of this State in which a decision of the matter, now complained of, could be had, and that this honorable court did, by its order, judgment or decree, made and passed on the second day of April, 1903, affirmed the aforesaid order, judgment or decree of the Baltimore city court, wherein was drawn in question the construction of a clause of the Constitution of, or of a treaty of, or of a statute of, or of a commission, held under the United States, and particularly the constitution of the act of Congress, approved June 19, 1878, and entitled
5 "An act granting a site for a dry-dock in the city of Baltimore upon certain conditions," hereinbefore referred to, and of a certain deed of conveyance made by Honorable George W. McCrary, Secretary of War of the United States. to said appellant corporation, dated March 26, 1879, and recorded among the land records of Baltimore city, in pursuance thereof, and the decision of this honorable court was against the title, rights, privileges or exemptions, specially accorded to and claimed by said appellant corporation under such clause of said Constitution, treaty, statute or commission of the United States.

Second. That your petitioner is advised, and doth therefore aver, that by virtue of the matters and facts herein set forth, it is entitled to have this cause heard, and its rights in the premises determined, by the Supreme Court of the United States on a writ of error directed to this honorable court.

Wherefore your petitioner prays that it may be allowed a
6 writ of error from the Supreme Court of the United States directed to the court of appeals of Maryland, touching the matters in this petition set forth, and the matter of the title, right, privilege or exemption, so as aforesaid accorded to and claimed by your petitioner under the clause of the Constitution, or treaty, or statute, or commission of the United States, hereinbefore referred to, which have been denied to it by the final decree of this honorable court, as aforesaid; and that the decision, order, judgment or decree of this honorable court, in the manner complained of, may be reversed.

And this it will ever pray.

ARCHIBOLD H. TAYLOR,
E. P. KEECH, JR.,
LEON E. GREENBAUM,
Counsel for Petitioner.

Let a writ of error issue as prayed on the filing of an appeal
7 bond in the penalty of one thousand dollars, to be approved by the undersigned.

JAMES McSHERRY,
Chief Judge of the Court of Appeals of Maryland.

Writ of Error.

Filed April 22nd, 1903.

UNITED STATES OF AMERICA, *ss:*

[The Seal of the Circuit Court of Maryland.]

The President of the United States of America to the honorable the judges of the court of appeals of the State of Maryland, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said court of appeals
8 of the State of Maryland before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between The Baltimore Shipbuilding and Dry Dock Company of Baltimore City *was* appellant, and The Mayor and City Council of Baltimore, Conway W. Sams, Solomon H. Freeburger and Oscar Leser, judges of the appeal tax court of said city, *were* appellees, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution, or of a treaty, or statute of, or commission held under the United
9 States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission; a manifest error hath happened to the great damage of the said Baltimore Shipbuilding and Dry Dock Company; *a manifest error hath happened to the great damage of the said Baltimore Shipbuilding and Dry Dock Company* of Baltimore City, as by its complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington,

within 30 days from the date hereof, that the record and
10 proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the twenty-first day of April in the year of our Lord one thousand nine hundred and three.

JAS. W. CHEW,
Clerk of the Circuit Court of the United States for the District of Maryland.

Allowed by
JAMES McSHERRY,
Chief Judge of the Court of Appeals of Maryland.

11 *Assignment of Error.*

Filed April 22nd, 1903.

In the Supreme Court of the United States.

BALTIMORE SHIPBUILDING AND DRY Dock Company of Baltimore City *vs.* MAYOR AND CITY COUNCIL OF BALTIMORE and Conway W. Sams, Solomon H. Freeburger, and Oscar Leser, Judges of Appeal Tax Court.	On Writ of Error to the Court of Appeals of Maryland.

Now comes The Baltimore Shipbuilding and Dry Dock — of Baltimore City, the plaintiff in error in the above entitled cause, and assigns error in the order, judgment or decree of the court of — Maryland, heretofore, on April 2nd, 1903, entered and made in these proceedings, to wit:

12 First. For that by the aforesaid order, judgment or decree of the court of appeals of Maryland, said court decided and held that an assessment for the purposes of State and municipal taxation could be, and the same was thereby, made by the State of Maryland and the mayor and city council of Baltimore, upon certain real property, being the lands and improvements thereon, mentioned in the petition of appeal in these proceedings, in which said real property the United States have an interest, right and title.

Second. For that by the aforesaid order, judgment or decree of the court of appeals of Maryland, said court decided and held that an assessment for the purposes of State and municipal taxation could be, and the same was thereby, made by the State of Maryland and mayor and city council of Baltimore, upon the interest of

the appellant corporation in certain real property, being the
13 lands and improvements thereon mentioned in the petition of appeal in these proceedings, in which said real property the United States also have an interest, right and title.

Third. For that by the aforesaid order, judgment or decree of the court of appeals of Maryland, said court decided and held that an assessment for the purposes of State and municipal taxation could be and the same was thereby, made by the State of Maryland and the mayor and city council of Baltimore, upon certain real property, being the lands and improvements thereon, mentioned in the petition of appeal in these proceedings, which said real property is now being, used for a public purpose by the United States.

Fourth. For that by the aforesaid order, jud-ment or decree of the court of appeals of Maryland, said court decided and held that an assessment for the purposes of State and municipal taxation could be, and the same was thereby, made by the State of
14 Maryland and mayor and city council of Baltimore, upon certain real property, being the lands and improvements thereon, mentioned in the petition of appeal in these proceedings, which said real property is and constitutes an agency of the United States, used by them in the exercise of constitutional powers vested in the United States.

Fifth. For that by the aforesaid order, judgment or decree of the court of appeals of Maryland, said court decided and held that an assessment for the purposes of State and municipal taxation could be, and the same was thereby, made by the State of Maryland and mayor and city council of Baltimore, upon certain real property, being the lands and improvements thereon, mentioned in the petition of appeal in these proceedings, over which said real property the United States are vested with exclusive jurisdiction and
15 power of legislation, and the right and power to exercise the same.

Wherefore the said Baltimore Shipbuilding and Dry Dock Company of Baltimore City prays that said final order, judgment or decree of said court of appeals of Maryland be reversed, and that the error herein complained of may be ratified.

And this it will ever pray etc.

ARCHIBALD H. TAYLOR.
E. P. KEECH, JR.
LEON E. GREENBAUM.

Citation.

Filed April 22nd, 1903.

UNITED STATES OF AMERICA, ss:

To the Mayor and City Council of Baltimore, Conway W. Sams Solomon H. Freeberger, and Oscar Leser, judges of the ap-
16 peal tax court of Baltimore city, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington within 30 days from the date hereof, pursuant to a writ of error, filed in the clerk's office of the court of appeals of the State of Maryland wherein The Baltimore Shipbuilding and Dry Dock Company of Baltimore City a corporation, is plaintiff in error and you are defendant in error, to show cause if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable James McSherry chief judge of the court of appeals of Maryland, this eighteenth day of April, in the year of our Lord one thousand nine hundred and three.

JAMES McSHERRY,
Chief Judge of the Court of Appeals of Maryland.

17 Service of within citation admitted this 21 day of April 1903.

OLIN BRYAN,
Counsel for All Defendants in Error.

18 In the Baltimore City Court, September Term, 1902.

THE BALTIMORE SHIPBUILDING AND DRY DOCK COMPANY OF BALTIMORE CITY, Appellant,
vs.
MAYOR AND CITY COUNCIL OF BALTIMORE and THE APPEAL TAX COURT, Appellee-.

October 17th, 1902.—The following petition and appeal was filed:

In the Baltimore City Court.

BALTIMORE SHIPBUILDING AND DRY DOCK COMPANY OF BALTIMORE CITY, a Corporation,
vs.
THE MAYOR AND CITY COUNCIL OF BALTIMORE and CONWAY W. SAMS, SOLOMON H. FREEBURGER, and OSCAR LESER, Judges of the Appeal Tax Court.

To the honorable the judge of said court:

The petition of the Baltimore Shipbuilding and Dry Dock Company of Baltimore City, a corporation of the State of Maryland, respectfully shows to your honor:

First. That your petitioner is a corporation organized under the laws of the State of Maryland, with the present and amended corporate name and title above set forth, and with the former corporate name and title of the "Baltimore Dry Dock Company of Baltimore City," and is engaged in the maintenance and operation of a dry dock on certain lands, hereinafter referred to, in the city of Baltimore and in the business of building, constructing and repairing ships and vessels in the city of Baltimore, State of Maryland, duly certified copies of which articles of incorporation and two certain amendments thereto are herewith filed marked Petitioner's Exhibit- A, B and C and are prayed to *to* taken as part hereof.

Second. That its office, works and dry dock are located on certain lands situate at Locust point, having a front on the Pa-
19 tapsco river, and constituting a part of the Fort McHenry, tract, belonging to the Government of the United States of America, and more particularly described as follows, that is to say:

"So much of the land belonging to the United States, in said city of Baltimore, known as the Fort McHenry tract, as lies between the northwestern boundary line of the said tract, and a line parallel thereto and distant four hundred and fifty feet therefrom, and between a line of two hundred and fifty feet from the northern side of Fort avenue (a street or avenue of said city extended) and parallel thereto, and the northwest branch of the Patapsco river."

Third. That the only title to said land vested in your petitioner, is so vested by virtue of a deed bearing date the 26th. day of March, 1879, and recorded among the land records of Baltimore city in Liber F. A. P. No. 836, folio 557 etc., from George W. McCrary, Secretary of War of the United States, to your petitioner, made in pursuance of an act of Congress, passed and adopted at the second session of the Forty-fifth Congress of the United States, and known as chapter 310, of the acts of said Congress entitled "An act granting a site for a dry dock in the city of Baltimore upon certain conditions," and approved June 19th. 1878; and that the conveyance of said land by said Honorable George W. McCrary, Secretary of War of the United States, was made to your petitioner, and your petitioner holds said land upon, and only upon, the conditions set forth in said act of Congress, and in the deed of said land made in pursuance thereof as aforesaid, which conditions are set forth in section 2 of said act of Congress, and are as follows:

SECTION 2. That in consideration of the said conveyance, and as the condition upon which the same is made, the said dry dock company shall be required to construct, upon the land conveyed as aforesaid, within two years from the date of conveyance, an efficient Simpson's improved dry dock, four hundred and fifty feet in length, and to accord to the United States the right to the use forever of the said dry dock, at any time, for the prompt examination and repair of vessels belonging to the United States free from charge for docking; and if at any time said property hereby conveyed shall be diverted to any other use than that herein named, or if the said dry dock shall be at any time unfit for use for a period of six months, or more, the property hereby conveyed with all its privileges and appurtenances shall revert to and become the absolute property of the United States, duly certified copies of which deed and act of Congress are herewith filed marked Petitioners' Exhibits D and E, and are prayed to be taken as part hereof.

Fourth. That your petitioner is advised by counsel, and doth therefore aver that by virtue of the matters and facts hereinbefore set forth, and, particularly, by virtue of the fact that your petitioner is not vested with indefeasible title to said land, but that re-
20 versionary title to the same is reserved to, and is vested in the United States, as by reference to said act of Congress and said deed, made in pursuance thereof, will more fully appear that the title of your petitioner to said land is liable to be divested at any time on the happening of any of the contingencies, mentioned and set forth in said act of Congress and deed, that the same are liable to, and will, upon the happening of any one of said contingencies, revert to the United States of America; and that said lands are held by your petitioner, upon, and only upon, the conditions, set forth in said act of Congress and deed, said land and premises and appurtenances thereof are not subject to taxation by the State of Maryland and by the mayor and city council of Baltimore.

Fifth. That the appeal tax court of Baltimore city did, on the 30th. day of September, 1902, assess said real estate for the purposes of taxation for the year 1903, to your petitioner, as owner of the same at the sum of seventy-five thousand dollars.

Sixth. That the exemption of said land and appurtenances from taxation by the State of Maryland and mayor and city council of Baltimore was expressly raised, alleged and claimed by your petitioner before the appeal tax court of Baltimore city, and the nature of the tenure of said land by your petitioner was expressly called to the attention of the judges of said appeal tax court, before any assessment was made for the purposes of taxation by the State of Maryland and mayor and city council of Baltimore, as aforesaid; and that by the decision, judgment and decree of said appeal tax court assessing or attempting to assess for the purpose of taxation said lands, there was drawn in question the construction of a clause of the Constitution, or of a treaty, or of a statute, or of a commission held under the United States, and particularly the construction of the act of Congress, approved June 19th, 1878, as aforesaid, and the decision of said court was against the title, right, privilege or exemption, specially set up or claimed by your petitioner under such clause of said Constitution, treaty, statute or commission of the United States.

Seventh. That your petitioner is aggrieved and injured because of and by the assessment of said lands and premises which is illegal, unequal and erroneous.

1. Because said lands are not subject to taxation by the State of Maryland and mayor and city council of Baltimore.

2. Because of the overvaluation and overassessment of said lands, and because said assessment is excessive and greater than the value of said lands to your petitioner.

And for other reasons to be shown at the hearing.

Wherefore your petitioner prays an appeal to this honorable court and that this court may review, strike out and correct
21 said illegal and erroneous assessments, and that your petitioner may have such other and further relief etc.

And as in duty bound etc.

McCOMAS, GAITHER & GREENBAUM,
TAYLOR & KEECH,
Attorneys for Baltimore Shipbuilding and Dry Dock Company of Baltimore City.

[SEAL.] BALTIMORE SHIPBUILDING AND DRY DOCK COMPANY OF BALTIMORE CITY,
By J. TRIPLETT HAXALL, *Secretary.*

And the following exhibits were also filed with the petition and appeal; and are as follows, A, B, C, D and E.

The Baltimore Dry Dock Company.

Certificate of Incorporation.

Know all men by these presents that we, James Carey Coale, Charles Morton Stewart, Decatur H. Miller, Robert Garrett and George A. Von Lingen all residing in the city of Baltimore in the State of Maryland, being citizens of the United States and a majority of whom are citizens of the State of Maryland, do hereby certify that we do under and by virtue of the general laws of this State authorizing the formation of corporations hereby form a corporation under the name of the Baltimore Dry Dock Company of Baltimore City.

2. We do further certify that the said corporation so formed is a corporation for constructing and operating a Simpson improved dry dock to be used in docking vessels for examination and repair. Also for the purpose of erecting work- for and conducting the business of building and repairing steamships and other vessels the construction and repair of steam and other machinery and such other operations as usually pertain to ship yards, docking yards and machinery works; that the term of existence of the said corporation is limited to forty years, and that the said corporation is formed upon the articles, conditions and provisions herein expressed, and subject in all particulars to the limitations relating to corporations which are contained in the general laws of this State.

3. We do further certify that the operations of the said corporation are to be carried on in Baltimore city, Baltimore county and Anne Arundel county, and that the principal office of the said corporation will be located in Baltimore city.

4. We do further certify that the aggregate of the capital stock of the said corporation is one million dollars and the said capital is divided into ten thousand shares of the par value of one hundred dollars each.

22 5. We do further certify that the said corporation will be managed by a board of directors and that James Carey Coale, Charles Morton Stewart, Decatur H. Miller, Robert Garrett and George A. Von Lingen are the names of the directors who will manage the concerns of said corporation for the first year.

In witness whereof we have hereunto set our hands and seals this first day of December, in the year eighteen hundred and seventy seven.

JAMES CAREY COALE. [SEAL.]
C. MORTON STEWART. [SEAL.]
DECATUR H. MILLER. [SEAL.]
ROBERT GARRETT. [SEAL.]
G. A. VON LINGEN. [SEAL.]

Witness:
JNO. T. MADDOX.

STATE OF MARYLAND, *Baltimore City,* } *To wit:*

Before the subscriber, a justice of the peace of the State of Maryland, in and for the city of Baltimore personally appeared on this first day of December, eighteen hundred and seventy-seven, James Carey Coale, Charles Morton Stewart, Decatur H. Miller, Robert Garrett and George A. Von Lingen and did severally acknowledge the foregoing certificate to — their act and deed.

JNO. T. MADDOX, *J. P.*

I, George W. Dobbins, one of the judges of the supreme bench of Baltimore city, do hereby certify that the foregoing certificate has been submitted to me for my examination. And I do further certify that the said certificate is in conformity with the provisions of the law authorizing the formation of said corporation.

GEORGE W. DOBBIN.

December 13th 1877.

Filed for record Dec. 14th 1878 at 1½ o'cl'k p. m. same day rec'd and ex'd per Geo. Robinson, clerk.

I hereby certify that the foregoing is a true copy taken from Liber G. R. No. 19, folio 370 &c. One of the charter records of Baltimore city.

In testimony whereof I hereto set my hand and affix the seal of the superior court of Baltimore city this 9th day of October, A. D. 1902.

[SEAL.] ROB'T OGLE,
Clerk of the Superior Court of Baltimore City.

Baltimore Dry Dock Company of Baltimore City.

Certificate of Reduction of Capital Stock.

At a meeting of the members of the Baltimore Dry Dock
23 Company of Baltimore City held at their office in the city of Baltimore on the fourteenth day of December, 1878, there were present as follows: James Carey Coale, L. Morton Stewart, Decatur H. Miller and Robert Garrett, being a majority of the members named in the articles of incorporation heretofore filed in the records of the superior court of Baltimore city on the fourteenth day of December, 1877, when James Carey Coale was called to the chair and Robert Garrett appointed secretary. The following resolutions *was* then offered by C. Morton Stewart and unanimously adopted:

Whereas since the organization of this company and before any stock has been subscribed therein it has been ascertained that it will

not be necessary with a view to the object therefore that the capital stock should be one million dollars as provided in the original certificate of incorporation,

Therefore be it resolved that the provisions of the charter of the said corporation shall be so far altered as to reduce the capital stock of the Baltimore Dry Dock Company of Baltimore City to three hundred and sixty five thousand five hundred dollars, divided into three thousand six hundred and fifty-five shares of one hundred dollars each

Resolved that the proceedings of this meeting be submitted to a judge of the supreme bench of Baltimore city in order that he may determine whether the alteration above mentioned is in conformity with the laws.

In testimony whereof the members of the said corporation have hereto set their hands and seals:

JAS. CAREY COALE. [SEAL.]
C. MORTON STEWART. [SEAL.]
DECATUR H. MILLER. [SEAL.]
ROBERT GARRETT. [SEAL.]

Test: A. HARRIS.
Test: THOS. W. MORSE.

STATE OF MARYLAND, *City of Baltimore,* } *sct:*

Be it remembered that on this fourteenth day of December, in the year 1878 personally appeared before me the subscriber a justice of the peace of the State of Maryland, in and for Baltimore city, James Carey Coale, C. Morton Stewart, Decatur H. Miller and Robert Garret, and acknowledged the above instrument of writing to be their several act and deed.

THOS. W. MORSE, *J. P.*

STATE OF MARYLAND, *City of Baltimore.* }

Be it known that I, George W. Dobbin a judge of the su-
24 preme bench of Baltimore city have examined the above proceedings and hereby certify that the alteration in the provision of the charter of the Baltimore Dry Dock Company of Baltimore City therein set forth is in conformity with law, no stock having been subscribed, and the said alterations being made in conformity with provisions of the forty-second section of article twenty-six of the Code of Public General Laws.

GEORGE W. DOBBIN.

Dec. 17th. 1878.

Filed for record Dec. 17th. 1878 at 10 o'cl'k a. m. Same day rec'd and ex'd per F. A. Prevost clerk.

I hereby certify that the foregoing is a true copy taken from Liber F. A. P. No. 20, folio 242 etc. One of the charter records of Baltimore city.

In testimony whereof I hereto set my hand and affix the seal of the superior court of Baltimore city this 9th. day of October A. D. 1902.

[SEAL.] ROBT OGLE,
Clerk of the Superior Court of Baltimore City.

Baltimore Dry Dock Company of Baltimore City.

Amendment Changing Name to Baltimore Shipbuilding and Dry Dock Company of Baltimore City.

Know all men by these presents: That at a general meeting of the stock holders of the Baltimore Dry Dock Company of Baltimore City, a body corporate incorporated under the general laws of the State of Maryland by certificate of incorporation dated December 1st. 1877, and recorded among the charter records of Baltimore city in Liber G. R. No. 19, folio 370 etc. and amended by two certificates of amendment thereof dated December 14th. 1877 and November 30th. 1881 respectively, and recorded among the charter records of Baltimore city in Liber F. A. P. No. 20, folio 242 etc. and Liber F. A. P. No. 22, folio 13 etc. respectively, held at the office of the company in the city of Baltimore on the eighth day of January 1902, at which were present in person or by proxy the holders of a majority of all the shares of the capital stock of said corporation, being a quorum thereof, it was resolved with unanimous assent of each and all of the stockholders present at said meeting that the articles of incorporation of this company be amended in such manner that the name of this company be changed to read and be the "Baltimore Shipbuilding and Dry Dock Company of Baltimore City" and in such manner that the number of directors to manage the affairs of said company be increased from seven to twelve. And it was resolved that the undersigned who constitute the board of directors of this company, or any five of them, be authorized on behalf of said corporation to sign, seal, acknowledge and cause to be recorded and do all things necessary to give effect to a certificate of amendment of said articles of incorporation according to law and the terms of said resolution:

Now therefore, the undersigned in pursuance and by virtue of the authority contained in said resolution of said corporation as evidenced by the certificate of the president and secretary thereof under its corporate seal thereto affixed, do certify first that the name of said corporation be and that the same is hereby amended and changed in such manner as to read and to be the "Baltimore Shipbuilding and Dry Dock Company of Baltimore City," instead of the Baltimore Dry Dock Company of Baltimore City, and second that

said corporation will be managed by a board of twelve directors instead of seven as provided by and in said original articles of incorporation, and the amendments thereof hereinbefore referred to.

In witness whereof we have hereunto set our hands and seals this eleventh day of January in the year one thousand nine hundred and two.

JOHN QUITMAN LOVELL. [SEAL.]
JOHN WILLIAM MIDDENDORF. [SEAL.]
DOUGLAS H. GORDON. [SEAL.]
WILLIAM T. STILWELL. [SEAL.]
CHARLES F. MACKLIN. [SEAL.]
GEO. M. SHRIVER. [SEAL.]
RUFUS K. WOOD. [SEAL.]

Test: HARRY L. PRICE.

STATE OF MARYLAND, *Baltimore City,* } *To wit:*

I hereby certify that on this eleventh day of January, 1902, there personally appeared before the subscriber a notary public of the State of Maryland, in and for the city of Baltimore aforesaid, John Quitman Lovell, John William Middendorf, Douglas H. Gordon, William T. Stilwell, Charles F. Macklin, George M. Shriver and Rufuss K. Wood, and they each of them acknowledged the foregoing amended certificate to be their act and deed.

As witness my hand and notarial seal.

[SEAL.] HARRY L. PRICE,
Notary Public.

This is to certify that the aforegoing amendment to the original articles of incorporation of the Baltimore Dry Dock Company of Baltimore City and of the amendments thereof referred to in the foregoing amendment is authorized by said corporation as in the aforegoing amendment set forth.

In witness whereof John Quitman Lovell, president of
26 said corporation hath hereunto set his hand, and J. Triplett Haxall the secretary of said corporation, has hereunto affixed his hand and the seal of said corporation.

JNO. QUITMAN LOVELL,
President.

J. TRIPLETT HAXALL,
Secretary. [SEAL.]

I, Henry Stockbridge, one of the judges of the supreme bench of Baltimore city, do hereby certify that the foregoing amended certificate has been submitted to me for my examination. And I do further certify that said amended certificate is in conformity with

the provision of the law authorizing amendments to the articles of incorporation of said corporation.

HENRY STOCKBRIDGE.

Rec'd for record Jan. 22, 1902, at 2.45 o'cl'k p. m. Same day recorded and ex'd per Rob't Ogle, cl'k.

I hereby certify that the foregoing is a true copy taken from Liber R. O. No. 40, folio 432 &c. one of the charter records of Baltimore city.

In testimony whereof I hereto set my hand and affix the seal of the superior court of Baltimore city, this 10th. day of October, A. D. 1902.

[SEAL.] ROB'T OGLE,
Clerk of Superior Court of Baltimore City.

George W. McCrary, Secretary of War of the United States, to Balto. Dry Dock Co. of the City of Baltimore. } Deed.

This deed made this twenty-sixth day of March, in the year of our Lord eighteen hundred and seventy-nine by me, George W. McCrary, Secretary of War of the United States.

Witnesseth that by virtue and in execution of a power and direction to me as Secretary of War of the United States contained in a certain act of Congress approved on the nineteenth day of June, in the year eighteen hundred and seventy eight entitled "An act granting a site for a dry dock in the city of Baltimore upon certain conditions." I the said George W. McCrary, Secretary of War of the United States do hereby in consideration of the requirements and upon the conditions hereinafter set forth grant and convey in fee unto the Baltimore Dry Dock Company of Baltimore City, a body corporate, created under the laws of the State of Maryland by a certificate of incorporation dated on the first day of December, in the year eighteen hundred and seventy-seven and duly recorded among the charter records of Baltimore city in Liber G. R. No. 19, folio 370 &c. and amended by a certificate dated on the fourteenth day of December, in the year eighteen hundred and seventy eight and duly recorded as aforesaid in Liber F. A. P. No. 20, folio 242 &c.

27 so much of the land belonging to the United States in said city known as th- Fort McHenry tract as lies between the northwestern boundary line of said tract and a line parallel thereto and distant four hundred and fifty feet therefrom and between a line distant two hundred and fifty feet from the northern side of Fort avenue (a street or avenue of said city extended) and parallel thereto and the northwestern branch of the Patapsco river.

Together with the rights, privileges, ways, waters and appurtena-ces belonging to the said parcel of lands so described. The consideration of this conveyance and the condition upon which the same is made being that the said The Baltimore Dry Dock Com-

pany of Baltimore City is required to construct upon the land hereby conveyed within two years from the date of this conveyance an efficient "Simpson's dry dock" four hundred and fifty feet in length and to accord to the United States the right to the use forever of the said dry dock at any time for the prompt examination and repair of vessels belonging to the United States free from charge for docking and that if at any time the property hereby conveyed shall be diverted to any other use than that herein named or if the said dry dock shall be at any time unfit for use for a period of six months or more the property hereby conveyed with all its privileges and appurtenances shall revert to and become the absolute property of the United States.

In testimony whereof I, George W. McCrary, Secretary of War of the United States, have hereunto subscribed my name and caused the seal of the Department of War to be affixed.

Done at the city of Washington this twenty-sixth day of March, in the year of our Lord eighteen hundred and seventy-nine and of the Independence of the United States of America the one hundred and third.

[SEAL.] GEO. W. McCRARY,
Secretary of War.

Witness-:
H. T. CROSBY.
THOS. H. BRADLEY.

DISTRICT OF COLUMBIA, }
City of Washington. }

Be it remembered and it is hereby certified that on this twenty-sixth day of March, in the year of our Lord eighteen hundred a d seventy-nine, before me, the subscriber, a notary public of the District of Columbia, in and for the city of Washington, personally appeared the Honorable George W. McCrary, Secretary of War of the United States, and by virtue of the power and authority conferred upon him by an act of Congress approved on the nineteenth day of June, in the year eighteen hundred and seventy-eight entitled "An act granting a site for a dry dock in the city of Baltimore upon certain conditions," subscribed his name and caused the seal of the Department of War to be affixed to the aforegoing
28 deed in my presence and before me acknowledge- the same to be his act and that of the United States for the purposes therein set forth and declared.

In testimony whereof I, H. T. Crosby, notary public of the District of Columbia, in and for the city of Washington, have hereunto subscribed my name and caused my notarial seal to be affixed this twenty-sixth day of March, in the year eighteen hundred and seventy-nine.

[SEAL.] H. T. CROSBY,
Notary Public.

On the foregoing was the following endorsement: Recorded in War Department Deed Book No. 4 pages 67, 68 and 69. Rec'd for record Mar. 29-79 at 12½ o'cl'k p. m. Same day recorded and ex'd per F. A. Prevost, clerk.

I hereby certify that the foregoing is a true copy taken from Liber F. A. P. No. 836, folio 557 &c. One of the land records of Baltimore city.

In testimony whereof, I hereto set my hand and affix the seal of the superior court of Baltimore city this 9th. day of October, A. D. 1902.

[SEAL.] ROB'T OGLE,
Clerk of the Superior Court of Baltimore City.

No. 17532.

UNITED STATES OF AMERICA,
DEPARTMENT OF STATE.

To all to whom these presents shall come, Greeting:

I certify, that hereto annexed is a true copy of an act of Congress, approved June 19, 1878, the original of which is on file in this department, entitled, "An act granting a site for a dry-dock in the city of Baltimore upon certain conditions."

In testimony whereof, I, *John Hay*, Secretary of State of the United States, have hereunto subscribed my name and caused the seal of the Department of State to be affixed.

Done at the city of Washington this *14th.* day of *October*, A. D. 1902, and of the Independence of the United States of America the one hundred and twenty-seventh.

[SEAL.] JOHN HAY.

An act granting a site for a dry dock in the city of Baltimore upon certain conditions.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of War be, and he is hereby, directed to convey to the Baltimore Dry Dock Company of Baltimore City, a body corporate, created under the laws of the State of Maryland, for the consideration hereinafter described, so much of the land belonging to the United
29 States, in said city, known as the Fort McHenry tract, as lies between the northwestern boundary line of the said tract, and a line parallel thereto and distant four hundred and fifty feet therefrom, and between a line two hundred and fifty feet from the northern side of Fort avenue (a street or avenue of said city extended), and parallel thereto, and the northwest branch of the Patapsco river.

SEC. 2. That in consideration of the said conveyance, and as the condition upon — the same is made, the said dry dock company shall be required to construct, upon the land conveyed as aforesaid, within two years from the date of the conveyance, an, efficient "Simpson's improved dry-dock," four hundred and fifty feet in length, and to accord to the United States the right to the use forever of the said dry-dock, at any time, for the prompt examination and repair of vessels belonging to the United States, free from charge for docking; and if at any time said property hereby conveyed shall be diverted to any other use than that herein named, or if the said dry-dock shall be at any time unfit for use for a period of six months, or more, the property hereby conveyed with all its privileges and appurtenances shall revert to, and become the absolute property of the United States.

Approved June 19, 1878.

December 11th, 1902.—The following agreed statement of facts was filed, to wit:

In the Baltimore City Court.

BALTIMORE SHIPBUILDING AND DRY DOCK COMPANY of Baltimore City
vs.
THE MAYOR AND CITY COUNCIL OF BALTIMORE, ETC. } Tax Appeal.

Agreement of Counsel.

It is agreed between counsel for the parties in the above entitled cause.

First. That the matters of fact alleged in the petition and appeal of the Baltimore Shipbuilding and Dry Dock Company of Baltimore City, fi-ed in these proceedings, excepting however matters and conclusions of law therein stated, and excepting also the matters of fact and allegations concerning the value of the real estate, concerning which said appeal is taken, are true as set forth in said petition; and that the several exhibits filed with said petition are true and exact copies of the papers and instruments which they respectively purport to be, as set forth in said petition and appeal.

30 Second. That the land and real estate therein referred to, as being held by the said Baltimore Shipbuilding and Dry Dock Company of Baltimore City in the manner in said petition set forth was and is a part of the whole tract of land acquired by and conveyed to the Government of the United States under the following deeds:

A deed from Alexander Furnival, dated July 20th, 1795, recorded among the land records of Baltimore city, in Liber W. G. No. S. S. folio 142 etc.

A deed from William Goodwin, dated November 6th, 1798, recorded among the land records of Baltimore city in Liber W. G. No. 56, folio 440 etc.

A deed from William Goodwin, dated August 26th, 1800, recorded among the land records of Baltimore city in Liber W. G. No. 61, folio 580 etc.

A deed from Thomas B. Dorsey and others, dated September. 10th. 1836, recorded among the land records of Baltimore city in Liber T. K. No. 263, folio 194 etc.

A deed from James Bosley and others, dated September 15th. 1836, recorded among the land records of Baltimore city in Liber T. K. No. 263, folio 196 etc.

A deed from Richard W. Gill, dated November 16th. 1836, recorded among the land records of Baltimore city in Liber T. K. No. 265. folio 189 etc.

A deed from Elizabeth Conkling and others, dated October 8th. 1836, recorded among the land records of Baltimore city in Liber T. K. No. 264, folio 324 etc.; and that said land was acquired by the Government of the United States, with the consent of the State of Maryland, by the terms of the joint resolution of the General Assembly of Maryland, adopted at its November session, 1793, as follows:

"Whereas the United States may think it necessary to erect a fort, arsenal or other military works or buildings, on Whetstone point, for the public defence—therefore, resolved, that upon the application of the President of the United States to the governor, for permission to erect a fort, arsenal, or other military works, on the said point, for the purpose aforesaid, the governor shall and may grant the same, with the consent of the owner of the soil."

Third. It is further agreed, with the assent of the court, that the matters of said appeal shall be first heard by the court upon the question as to whether or not said lands and real estate are subject to taxation by the State of Maryland and the mayor and city council of Baltimore, and that the question as to the fairness, equality and correctness of the assessment of the same, made by the appeal tax court of Baltimore city, as set forth in said petition, shall be reserved until the court shall have made its determination upon the question of the taxability, *vel non*, of said lands, and shall
31 be then heard and determined by the court, in case and in the event that the court shall be of the opinion that said lands are taxable by the State of Maryland and the mayor and city council of Baltimore.

Fourth. It is further agreed that the map or plan of the harbor of Baltimore, prepared by the harbor engineers of Baltimore city is a true map or plan of said harbor, and shows accurately the land in the possession of the appellant corporation under the grant from the United States Government, referred to in the petition and appeal in these proceedings.

Fifth. It is further agreed that the assessment, complained of, is an assessment upon and covers all the land in the possession of the appellant corporation under the grant from the United States Government, referred to in the petition and appeal, and the riparian rights and appurtenances of said land including the piers; and that said assessment is made upon said land and appurtenances, as though it were the property of said appellant corporation; and that said assessment is upon said land, piers and its appurtenances, only, and not upon the buildings and improvements thereupon.

Sixth. It is further agreed, as a fact, subject to any and all legal exceptions on the part of the Mayor and City Council of Baltimore, to the relevancy of the same as proof, that the shares of the capital stock of said appellant corporation are assessed for taxation for 1902 in accordance with the statute of the State of Maryland, providing for the assessment and collection of taxes upon the shares of stock of corporations, incorporated under the laws of the State of Maryland.

McCOMAS, GAITHER & GREENBAUM,
TAYLOR & KEECH,
For Balto. S. B. & D. D. Co.
OSCAR LESER,
Judge of the Appeal Tax Court.
CHAS. W. FIELD,
For Mayor and City Council of Balto.

January 6th, 1903.—The following petition to amend the appellant's petition and appeal and the order of the court thereon was filed, to wit:

In the Baltimore City Court.

THE BALTIMORE SHIPBUILDING AND DRY DOCK COMPANY OF Baltimore City
vs.
THE MAYOR AND CITY COUNCIL OF BALTIMORE CITY, ETC.

32 To the honorable the judge of said court:

The appellant corporation, by its counsel, respectfully shows to your honor:

1. That subsequent to the filing of the petition and appeal in these proceedings, said petitioner discovered that the lands referred to in the above proceedings, had been acquired by the Government of the United States, in pursuance of the joint resolution of the General Assembly of Maryland set forth in the agreed statement of facts, heretofore filed in these proceedings; that, although the said facts were agreed upon by counsel and considered by the court at the hearing of this appeal, yet the same are not expressly set forth in the petition; and that your petitioner desires to amend said petition, so that said facts may be made to appear expressly therein.

2. That your petitioner desires to amend said petition by adding to the fourth paragraph thereof, at the conclusion of said paragraph, the following clause;

"And that said whole Fort McHenry tract, of which the lands held by your petitioner and above referred to, are a part, was purchased by the United States, by the consent of the legislature of the State of Maryland for the purposes expressed in the Constitution of the United States, article 1, section 8, and are still used for such purposes, and that, therefore, the same are not subject to taxation by the State of Maryland and mayor and city council of Baltimore."

Wherefore your petitioner prays that said petition and appeal may be amended in the manner hereinbefore set forth.

And this it will ever pray etc.

LEON E. GREENBAUM,
TAYLOR & KEECH,
Attorneys for Appellant.

Ordered by the Baltimore city court, this sixth day of January, 1903, that leave be, and the same is hereby granted to the appellant corporation to amend the petition and *appellant* in these proceedings in the manner specified in the foregoing petition, and that said petition and appeal be taken and considered as though so amended.

HENRY STOCKBRIDGE.

January 6th, 1903.—The following original notice of the assessment was filed to-wit:

33 Department of Review and Assessment.

Sub-department, Appeal Tax Court.

No. —.

BALTIMORE, *September 24th*, 1902.

Baltimore Dry Dock Company:

You are hereby notified that the valuation of your lot west of Fort McHenry and formerly part thereof, having a water front of 450 feet, with depth of 600 feet, more or less, has been assessed at $10. per front foot, viz: $75,000. for 1903. Appeal, if any, must be made to the appeal tax court, city hall, on or before the thirtieth 30th day of September, 1902.

Respectfully, HENRY A. WILLIAMS, *Assessor.*

January 6th, 1903.—The following opinion of the court, was filed to-wit:

In the Baltimore City Court.

THE BALTIMORE SHIPBUILDING AND DRY DOCK COMPANY of Baltimore City vs. THE MAYOR AND CITY COUNCIL OF BALTIMORE.	Appeal from the Appeal Tax Court.

In view of the peculiar circumstances involved in this case, it seems proper to state briefly in writing the conclusions reached and to indicate the reasons for the judgment which will be rendered. It is of course evident from the refusal of the prayer of the petitioner, that in the view of the court the property upon which the assessment had been made is not property of the United States Government in any sense, but it is property of the corporation, the petitioner. It is, however, property charged with a certain right of use, under definite conditions, by the United States Government, and the character of the uses to which it can be put is limited both by the act of Congress and the terms of the grant. These facts do not in my judgment at all affect the question of the ownership of the property, but rather constitute a charge upon the property not very dissimilar from what would exist if the property was held by the petitioner subject to an easement such as a right of way, or flowage of water, and which charge is therefore a proper element for consideration in the determination of the value of the property, whether that value be taken in the sense of a market value or value for purposes of taxation. There is probably no class of property which it is more difficult to place a proper valuation on than a lot such as this, and opinions of individuals therefore, may naturally be
34 expected to vary widely, since those opinions must inevitably be largely conjectural.

As it seems to me the best indicia by which the court can be guided, are the two actual sales of property not very dissimilarly located and both of which have occurred comparatively recently. These are two sales testified to by the witness Marriott, one of which is designated as the Roman property, sold at the rate of $13.30 a foot, and the other the sale of the lot to the B. & O. R. R. at $23 a foot, or allowing as the witness did for the value of improvements upon this latter lot, at a valuation of $15 per foot for the lot alone.

The average between these two sums, $15 and $13.30 per foot, the lot in the one case being larger and in the other smaller, than the property now in question, is $14.15, which under all the evidence seems to me to be a fair average valuation for this property. Assuming then the sum of $14.15 as being the fair valuation of property such as this, the question arises as to what peculiar conditions there are, surrounding this lot, which might effect such value, and what is a proper allowance to make for them. These conditions are three-

fold; first, the fact that there is no access to the lot upon the land side by any public highway, only over a private right of way used by permission; second, a stipulation in the deeds conveying the property which requires the owner to maintain upon it a dry-dock, thus limiting the uses to which a portion of it at least can be put; and third, the provisions that vessels belonging to the United States shall at any time have the right to be docked there without dockage charges.

The testimony of the witnesses as to the effect upon value of these conditions varies greatly, practically from a complete destruction of value, up to affecting it but slightly. I am of opinion that each one of these is an element to be considered upon this question of value of the lot, and upon consideration of the whole evidence it seems to me that whether for sale purposes, or purposes of taxation it may properly be said to diminish the value of the lot to the extent of one-third of the value of it, and that therefore if the value of this lot relieved of these charges, and in possession of different means of access would be $14.15 per foot, its value as it stands, subject to these charges, and with the means of access as it is, would be properly two-thirds of that sum, or $9.42 per foot, which would make the lot value $70,650, and the assessment as made by the appraisers will therefore be reduced to that sum.

HENRY STOCKBRIDGE.

January 6th, 1903.—The following order and judgment of the court was filed, to wit:

In the Baltimore City Court.

THE BALTIMORE SHIPBUILDING AND DRY DOCK COMPANY of Baltimore City *vs.* THE MAYOR AND CITY COUNCIL OF BALTIMORE.	Appeal from the Appeal Tax Court.

35 This cause coming on to be heard, upon the petition and testimony, and agreed statement of facts, in said cause produced, and argument being thereon had by counsel for the respective parties, it is, by the Baltimore city court, this sixth day of January, 1903, adjudged and ordered, that the property concerned in the appeal in this case, is lawfully subject to taxation by the State of Maryland and the city of Baltimore; and it is further ordered, that the assessment of seventy-five thousand dollars ($75,000) upon the aforesaid property, appealed from in this case, be set aside and reduced to the sum of seventy thousand six hundred and fifty dollars, ($70,650) which amount is hereby fixed by the court as the correct assessment upon said property for the year 1903. And the mayor and city council of Baltimore shall pay the costs of this suit.

HENRY STOCKBRIDGE.

January 7th, 1903.—Appeal prayed to the court of appeals by the appellant.

Appellant's Bill of Exceptions.

The petitioner offered in evidence the several exhibits filed with the petition and appeal in these proceedings, all of which are hereby declared to be taken as part hereof.

There was then submitted to the court the statement of facts, agreed upon between the parties to these proceedings and heretofore filed in these proceedings, which is hereby declared to be taken as part hereof.

The petitioner then offered in evidence the original notice of the assessment of the property referred to in the petition, which is hereby declared to be taken as part hereof.

The petitioner then proved by Daniel C. Coblens, the acting chief assessor of the appeal tax court of Baltimore city, that all assessments of real estate in the city of Baltimore are made upon the whole value of such real estate without regard to particular interests therein.

Testimony was then offered on behalf of the petitioner and on behalf of defendants, tending to show the true value of the lands and property referred to in the petition and appeal.

At the conclusion of the testimony the petitioner offered the following prayer:

Petitioner's Prayer.

The Baltimore Shipbuilding and Dry Dock Company of Baltimore City, the appellant corporation, prays the court to rule, as a matter of law, that the lands mentioned in the petition and appeal in these proceedings are not subject to taxation by the State of Maryland and the mayor and city council of Baltimore, for the reasons set up in the petition and appeal in these proceedings, and that, therefore, the assessment thereof for the purpose of taxation by such
36 State and municipal corporation, must be stricken out and declared to be null and void.

Refused.

Which prayer the court rejected, to the rejection of which prayer, the petitioner excepted and prayed the court to sign and seal this bill of exceptions; which is accordingly done this eighth day of January, 1903.

HENRY STOCKBRIDGE.

Test: HENRY A. SCHULTZ, *Clerk.*

STATE OF MARYLAND, } *sct:*
City of Baltimore, }

I, Henry A. Schultz, clerk of the Baltimore city court, do hereby certify, that the aforesaid is a full, true and entire transcript, taken from the record and proceedings of the said court in the therein entitled cause.

In testimony whereof, I hereunto set my hand and affix the seal of the Baltimore city court aforesaid, on this 9th day of January, nineteen hundred and three.

HENRY A. SCHULTZ,
Clerk of Baltimore City Court.

[Seal the Baltimore City Court.]

McCOMAS, GAITHER & GREENBAUM AND
TAYLOR & KEECH, *Att'ys for Appellant.*
W. P. WHYTE,
CHAS. W. FIELD, *Att'ys for Appellee.*

And now at this day, to wit, the second Monday in January, being the 12th day of the said month, in the year of our Lord one thousand nine hundred and three come into the court of appeals here, the parties aforesaid by their attorneys aforesaid.

Whereupon as well the record and proceedings aforesaid, and the order given in form aforesaid, being seen, and by the court of appeals here fully understood, and mature deliberation thereupon had, for that it appears to the court of appeals here, that there is no error in the record of proceedings aforesaid, nor in the giving of the order aforesaid: therefore it is considered by the court of appeals here, that the order aforesaid, given in form aforesaid, be in all things affirmed and stand in full force and effect, the said cause for error above assigned and alleged in anywise, notwithstanding.

37 And it is further considered by the court of appeals here, that the said Mayor and City Council of Baltimore, and the Judges of the Appeal Tax Court have execution against the said The Baltimore Shipbuilding and Dry Dock Company of Baltimore City as well for the cost and charges aforesaid adjudged unto them in the said Baltimore city court as also the sum of nineteen dollars and forty cents adjudged unto the said The Mayor and City Council of Baltimore and the Judges of the Appeal Tax Court by the court of appeals here, on their assent for their costs and charges which they have sustained by occasion of the delay of the execution of the order aforesaid, by pretext of the prosecution of the said appeal by the said The Baltimore Shipbuilding and Dry Dock Company of Baltimore City for the correcting of errors of and upon the premises as aforesaid, prosecuted, &c.

On the second day of April 1903 the court of appeals filed the following opinion in the words and figures following, to wit:

38 *Opinion of the Court of Appeals of Maryland.*

Filed April 2nd, 1903.

THE BALTIMORE SHIPBUILDING AND DRY DOCK COMPANY OF Baltimore City
vs.
THE MAYOR AND CITY COUNCIL OF BALTIMORE ET AL.

Opinion by Schmucker, J.

This is an appeal from an order of the Baltimore city court confirming the action of the appeal tax court of Baltimore city in assessing for taxation the lot of ground and dry dock of the appellant, situated at Locust point in said city. The lot of ground, on which the dock is constructed, with its water front forms part of the property acquired, and held by the United States and known as
39 Fort McHenry. The appellant holds that lot under a conditional grant from the United States as a site for a dry dock and the sole question presented by the record is whether the interest in the land and dock thus held by it are taxable by the State.

It is conceded that lands held by the United States are not taxable by the State within whose boundaries they lie and that this disability remains effective until the Government sells the lands when it terminates. Nor is there any dispute in the present case that the land in question forms part of the Fort McHenry tract which was purchased many years ago by the United States with the assent of the State of Maryland and that it was thereby made exempt from taxation by the State so long as it continued to be held by the United States. The only question in the case is whether the
40 transaction between the United States and the appellant under which the latter is now in possession and enjoyment of the land was such as to terminate its exemption from taxation.

It therefore become- necessary for us to consider what character of alienation by the United States of lands held by it for public purposes will prove effective to terminate or destroy their exemption from State taxation. The question in the precise form in which it is now presented is we believe a new one but some of the principles underlying it have received judicial consideration in other cases.

It has been repeatedly held that where a donee or purchaser of lands from the United States has fully complied with all of the conditions upon which he is entitled to a deed or patent for them and to their use he becomes the beneficial owner of them and they are subject to State taxation as his property although no deed or
41 patent may have been executed and delivered to him; but so long as any thing remains to be done or paid by the purchaser to perfect his right to the deed or patent the land remains ex-

empt from taxation, Kansas Pac. R. R. Co. *vs.* Prescott, 16 Wall. 603, North. Pac. R. R. Co. *vs.* Traill County, 115 U. S. 600, Union Pac. R. R. Co. *vs.* McShane, 22 Wall. 444, Husman *vs.* Durham, 165 U. S. 144.

In Central Pac. R. R. Co. *vs.* Nevada, 162 U. S. 512 and North. Pac. R. R. Co. *vs.* Patterson, 154 U. S. 130 it was held that the possessory claim of the railroad company to Government lands lying within a State was subject to taxation by the State notwithstanding the fact that the lands might thereafter be determined to be mineral lands and for that reason excluded from the operation of the grant from the United States to the railroad company. And in Maish *vs.* Arizona, 164, U. S. 597 a party in possession of lands under an unconfirmed Mexican land grant was held to have a valuable
42 equitable right which was subject to taxation by the State in which the lands were located although it might thereafter be adjudged that the lands in fact belonged to the United States. In North. Pac. R. R. Co. *vs.* Patterson, *supra*, the court quoted with approbation from Wisconsin R. Co. *vs.* Price Co. 133 U. S. 496 the statement "that he who has the right to property and is not excluded from its enjoyment shall not be permitted to use the legal title of the Government to avoid his just share of State taxation."

In the present case the appellant is in possession and enjoyment of the lands in question under a conveyance from the Secretary of War made in pursuance of an act of Congress approved June 19th 1878 which provided "That the Secretary of War be, and he is hereby directed to convey to the Baltimore Dry Dock Company of Baltimore City, a body corporate, created under the laws of
43 the State of Maryland, for the consideration hereinafter described, so much of the land belonging to the United States, in said city, known as the Fort McHenry tract, as lies between the northwestern boundary line of the said tract, and a line parallel thereto and distant four hundred and fifty feet therefrom, and between a line two hundred and fifty feet from the northern side of Fort avenue (a street or avenue of said city extended), and parallel thereto, and the north west branch of the Patapsco river.

SEC. 2. That in consideration of the said conveyance, and as the condition upon — the same is made, the said dry dock company shall be required to construct, upon the land conveyed as aforesaid, within two years from the date of the conveyance, an efficient "Simpson's improved dry dock," four hundred and fifty feet in length, and to accord to the United States the right to the use forever of the said drydock, at any time, for the prompt exam-
44 ination and repair of vessels belonging to the United States, free from charge for docking; and if at any time said property hereby conveyed shall be diverted to any other use than that herein named, or if the said drydock shall be at any time unfit for use for a period of six months, or more, the property hereby conveyed with all its privileges and appurtenance- shall revert to, and become the absolute property of the United States."

The deed followed the terms of the act of Congress and conveyed the land to the appellant upon the conditions therein set forth.

Under this conveyance the appellant did not acquire the absolute fee simple title to the land but took only an estate therein limited to a particular use under special conditions and liable to be defeated upon a misuser or non user; yet it did take a
45 valuable interest in the land of which it has been in full possession and enjoyment ever since. The deed to the appellant contains no restraint upon the alienation of the estate conveyed by it which partakes of all of the essential features of property. The fact that the United States retains and may at some future time exercise the right to retake possession of the land upon a breach of the conditions of the grant ought not, when no such breach is alleged, to enable the appellant to escape its just share of State taxation. If the land should ever revert to the United States under the terms of the grant the taxable interest in it would be destroyed and in that event the assessment of it should be stricken off the books of the tax department. Or if the United States should in the exercise of its reserved right use the dock on the land for its own vessels continuously or to such an extent as to materially deprive the appel-
46 lant of its possession and enjoyment, that circumstance would form proper ground for a suitable abatement for the time being of the assessment of the property for the purposes of State taxation.

Another ground on which the appellant rest- its claim for the exemption of this property from taxation is that the dock with its equipments is in effect an agency of the Government for the docking of it ships and therefore fall within the operation of the well recognized principle that the instruments and agencies used by the Federal Government to execute its sovereign powers are not taxable by the States in which they are located. It is settled however that this principle does not apply to the property of individuals or corporations which is not in the exclusive use or under the ex-
47 clusive control of the Government altogether the latter may have a fixed right to a preference in the use of such property when occasion may require.

It was held in Thompson *vs.* Union Pac. R. R. Co. 9 Wall. 579 that the property of the Union Pacific Railroad Co. was liable to State taxation although it was admitted that the road formed part of a system of roads constructed under the direction and authority of Congress, and that it was bound to perform certain duties for the Government and ultimately to pay to it a fixed percentage of its revenue and that its property was mortgaged to the United States. And in Union Pac. R. R. *vs.* Pemston, 18 Wall. 5 it was again held that the property of the railroad company was liable to State taxation although the road was to some extent an agent of the General Government designed to be employed and actually employed in the legitimate service of the Government both military and postal.
48 The court in that case said "It is therefore manifest that exemption of Federal agencies from State taxation is not depend-

ent upon the nature of the agents or upon the mode of their constitution or upon the fact that they are agents but upon the effect of the tax, that is, upon the question whether the tax does in truth deprive them of power to serve the Government as they were intended to serve it or does hinder the efficient exercise of their power. A tax upon their property has no such necessary effect."

Tested by the propersitions thus laid down it is apparent that the tax now under consideration does not deprive the appellant of the power to serve the Government as it was intended to serve it, and its payment cannot be escaped on the ground that it is an agency of the Government.

49 Of course if it should ever become necessary for the State or city to sell this property of the appellant for the non-payment of taxes nothing more could be sold than its conditional estate in the land and the permanent improvements thereon, subject to all of the rights of the United States therein.

It has been the custom and policy of this State, when it became necessary to sell for non-payment of taxes land in which several parties held different estates *all of which were subject to assessment and taxation*, to sell the fee simple estate in exercise of its sovereign power, Cooper *vs.* Holms, 71 Md. 720, Textor *vs.* Shipley, 86 Md. 424, but it is manifest that the sovereign power of the State does not embrace within its operation the right or estate of the Federal Government in the land now in question.

50 We hold that the conditional interest or estate of the appellant in this land, subject to the rights of the United States therein, constitutes property within the meaning of sec. 2 of art. 81 of the Code and is taxable by the State and the city of Baltimore. In view of the fact that the situation of the title to the land is such the absolute fee therein cannot be taxed and therefore could not be sold for non-payment of taxes the assessment books should be so modified as to show that the estate assessed is subject to the right and interest of the United States in the land and improvements.

The order appealed from will be affirmed.

Order affirmed with costs.

51 *Appeal Bond.*

Filed April 22nd, 1903.

Know all men by these presents, that we, the Baltimore Shipbuilding and Dry Dock Company of Baltimore City, a corporation of the State of Maryland, as principal, and the Fidelity and Deposit Company of Maryland, a body corporate of the State of Maryland, as surety, are held and firmly bound unto the Mayor and City Council of Baltimore, and Conway W. Sams, Solomon H. Freeburger and Oscar Leser, judge of the appeal tax court of said city, in the

full and just sum of one thousand dollars, to be paid to the said obligees, their certain attorney, executors, administrators or assigns; to which payment, well and truly to be made, we bind ourselves, our successors and assigns, jointly and severally by these
52 presents.

Sealed with the respective corporate seals of said bodies corporate, attested by their respective secretaries, and signed on their behalf by their respective presidents this eighteenth day of April, 1903.

Whereas, lately at a term of the court of appeals of Maryland in suit depending in said court, between The Baltimore Shipbuilding and Dry Dock Company of Baltimore City, appellant, and The Mayor and City Council of Baltimore and the above named judges of the appeal tax court of said city, an order, judgment or decree was rendered against the said Baltimore Shipbuilding and Dry Dock Company of Baltimore City, and the said Baltimore Shipbuilding and Dry Dock Company of Baltimore City having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the order, judgment or decree in the aforesaid suit, and a citation directed to the above named ap-
53 pellees in said court of appeals of Maryland citing and admonishing them to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date thereof.

Now, the condition of the above obligation is such, that if the said Baltimore Shipbuilding and Dry Dock Company of Baltimore City shall prosecute said writ of error to effect, and answer all damages and costs if it fail to make said plea good, then the above obligation to be void; else to remain in full force and virtue.

{Seal Baltimore Shipbuilding & Dry Dock Co., Baltimore City, Maryland. Incorporated 1877.}

BALTIMORE SHIPBUILDING AND DRY DOCK COMPANY OF BALTIMORE CITY,
By JNO. QUITMAN LOVELL, *President.*

Attest: J. TRIPLETT HAXALL, *Secretary.*

54 FIDELITY AND DEPOSIT COMPANY OF MARYLAND,
By EWIN WARFIELD, *President.*

{Seal Fidelity and Deposit Company of Baltimore. Incorporated 1890.}

Attest: HARRY NICODEMUS, *Secretary.*

Approved by—

JAMES McSHERRY,
Chief Judge of the Court of Appeals of Maryland.

55 STATE OF MARYLAND, *sct:*

I Thomas Parran, clerk of the court of appeals of Maryland, do hereby certify, that the foregoing record is a true transcript of the record and proceedings in the case of The Baltimore Shipbuilding and Dry Dock Company of Baltimore City, *vs.* The Mayor and City Council of Baltimore and The Appeal Tax Court, as taken from the records and proceedings of the said court of appeals.

And I do further certify that the said court of appeals of Maryland is the highest court of law or equity in said State in which a decision can be had in said case.

In testimony whereof, I have hereunto set my hand as clerk and affix, the seal of the said court of appeals this ninth day of May, A. D. 1903.

[Seal Court of Appeals, Maryland.]

THOMAS PARRAN,
Clerk Court of Appeals of Maryland.

[Endorsed:] Cost of transcript $9.25.

Endorsed on cover: File No. 18,936. Maryland court of appeals. Term No. 286. Baltimore Ship Building and Dry Dock Company of Baltimore City, plaintiff in error, *vs.* The Mayor and City Council of Baltimore *et al.* Filed May 16, 1903. File No. 18,936.

IN THE

Supreme Court of the United States,

OCTOBER TERM, 1904.

No. 39.

BALTIMORE SHIPBUILDING AND DRY DOCK COMPANY OF BALTIMORE CITY,

vs.

MAYOR AND CITY COUNCIL OF BALTIMORE ET AL.

ON WRIT OF ERROR TO THE COURT OF APPEALS OF MARYLAND

BRIEF OF PLAINTIFF IN ERROR.

STATEMENT OF CASE.

The writ of error in this case presents to the Court the question as to whether or not certain lands, held by the plaintiff in error under a grant upon condition from the United States, are subject to taxation by the State of Maryland and the "Mayor and City Council of Baltimore" (the corporate title of the city of Baltimore), the contention of the plaintiff in error being that the lands are exempt for three reasons:

First. The United States have an interest in the lands, and therefore neither the lands nor any estate in them, short of an absolute usufructary title, held by any private party, is subject to taxation without the express consent of the United States, which, it is conceded, is wanting here.

Second. Under the peculiar conditions of the grant, the lands themselves constitute a "federal agency."

Third. The lands having been acquired by the United States from the owners, with the unrestricted consent of the Legislature of Maryland, they are deemed to have been ceded to the United States, which consequently are vested with full and exclusive jurisdiction and legislative power over them; and inasmuch as no act of recession has been done, the State of Maryland is wholly lacking in jurisdiction of any kind over them.

The lands in question are a part of the "Fort McHenry Tract," which was acquired and is held by the United States by virtue of certain conveyances (referred to in the Record at pages 18 and 19), for public purposes within the meaning of the Federal Constitution, article 1, section 8, paragraph 17, and with the express and unrestricted consent of the Legislature of the State of Maryland, contained in a joint resolution of the General Assembly, adopted at its November session, 1793. (See Record, page 19.) It may be also said that this whole tract of land is of considerable area; it lies at the end of a tongue of land between two of the branches or arms of the Patapsco river; and on it from early times have been the fortifications known as "Fort McHenry."

In order to procure the erection of a dry dock of considerable size on a portion of these lands, and to secure to the Government the perpetual use of such dock at all times free of charge, Congress passed an act, approved June 19, 1878, and entitled "An Act Granting a Site for a Dry Dock in the City of Baltimore upon Certain Conditions," the material parts of which are:

1. "That the Secretary of War be, and he is hereby, directed to convey to the Baltimore Dry Dock Company of Baltimore City, a body corporate, created under the laws of the State of Maryland, for the consideration hereinafter described, so much of the land belonging to the United States in said city, known as the "Fort McHenry Tract," as lies within certain prescribed boundaries.

2. "That in consideration of the said conveyance, and as the condition upon which the same is made, the said Dry Dock Company shall be required to construct, upon the land conveyed as aforesaid, an efficient 'Simpson's Improved Dry Dock,' four hundred and fifty feet in length, and to accord to the United States the right to the use forever of the said dry dock, at any time, for the prompt examination and repair of vessels belonging to the United States, free from charge for docking; and if at any time said property shall be diverted to any other use than herein named, or if said dry dock shall be at any time unfit for use for a period of six months, or more, the property hereby conveyed with all its privileges and appurtenances, shall revert to and become the absolute property of the United States." (Record, pages 17 and 18.)

Subsequently, on March 26, 1879, the Honorable George W. McCrary, Secretary of War, made and executed a deed for the property described in the Act, to the plaintiff in error, upon the conditions in the Act set forth (Record, page 15), and within two years, the time limited by the Act, the plaintiff in error entered on the lands and constructed a dry dock of the prescribed style and size, which it has since maintained in such condition that the dry dock has never been unfit for use for a period of six months, or more, the land has never been diverted to any other use than that named in the Act, and the United States have had the use of the dry dock for the prompt examination and repair of vessels belonging to the United States, free from charge for docking, whenever required.

From the date of the deed from the Secretary of War, March 6, 1879, to September 24, 1902—more than twenty-three years—no attempt was made by the State of Maryland and city of Baltimore to assess these lands, or the estate of the plaintiff in error in them, for taxation. But on the last mentioned date the plaintiff in error was notified by the Appeal Tax Court of Baltimore City, the board of assessors of said city, of its intention to make an assessment on these lands for taxes for the year 1903. (Record, page 21.) Against this proposed assessment the plaintiff in error protested both on the ground of its illegality and with respect to its excessive amount, and upon final action being taken by the Appeal Tax Court, affirming its preliminary notice, the plaintiff in error promptly presented its petition of appeal to the Baltimore City Court, according to the provisions of the Statute. (Baltimore City Charter, sec. 170.) Omitting reference to so much of the proceedings in the State Courts as had to do with the quantum of the assessment, which of course is not reviewable by this Court, it may be said that the plaintiff in error objected to the assessment and taxation of these lands before the Appeal Tax Court and before the Baltimore City Court, upon precisely the same grounds upon which it is seeking to maintain its position before this Court, being the grounds hereinbefore set forth. (Record, page 7 *et seq.* and 20 *et seq.*)

It need scarcely be remarked that all of them present "Federal Questions," within the strictest definition of those words, in that they all have to do with a right, title, privilege or immunity claimed under an Act of Congress. (U. S. Rev. Stat., sec 709.)

The following facts need also to be noticed:

1. The assessment of the Appeal Tax Court was made upon the lands, as such, and not upon the interest or estate of the plaintiff in error in them. (Record, page 20, top; page 21, bottom; page 24, middle.)

2. The Baltimore City Court, by its order of January 6, 1903, also laid its assessment on the lands themselves. (Record, page 23.)

3. The assessment in question is laid upon the lands and certain permanent improvements, such as piers, but not upon the buildings, dry dock and other like improvements thereon. (Record, page 20.)

An appeal was taken from the order of the Baltimore City Court, affirming the action of the Appeal Tax Court in making the assessment on the lands, to the Court of Appeals of Maryland, the State Court of last resort, which by its final judgment, entered April 2, 1903, affirmed the judgment of the lower Court (the final judgment of the State Court of last resort being therefore adverse to the right, title, privilege or immunity set up under the Act of Congress). On April 22, 1903, application was made to the Hon. James McSherry, Chief Judge of the Court of Appeals of Maryland, for a writ of error from this Court to review the judgment of the Court of Appeals, which was thereupon allowed and sued out in due form of law. (Record, pages 1, etc.)

Assignment of Errors.

Upon this state of facts, the plaintiff in error contends that the final judgment of the Court of Appeals of Maryland, affirming the ruling of the Baltimore City Court, was erroneous for the following reasons:

First. The assessment complained of is an assessment on land, in which the United States have an interest, right or title, and neither the State of Maryland or any municipal corporation, created by it, has power to lay such an assessment or to tax any such land.

Second. If it be contended that the assessment is merely upon the interest or estate of the plaintiff in error in the land, it is none the less void, because, we maintain, neither the State of Maryland nor any of its agencies has power to tax any estate in land, in which the United States also have

an interest or estate, except the United States be the mere custodian of the dry legal title and the whole usufructary right to the lands be vested in another, or except the United States expressly consent to the taxation of such other interest or estate, neither of which contingencies is presented here.

Third. Under the peculiar terms and conditions of the grant in question here, the land has not ceased to be put to a public use by the grant of it to the plaintiff in error, but on the contrary, it, *i. e.* the land, *not the plaintiff in error*, constitutes an agency of the Federal Government, used by it in the exercise of its constitutional powers, and hence is not subject to State taxation.

Fourth. The land having been purchased by the consent of the Legislature of the State of Maryland for the public purposes within the meaning of the Constitution, Art. 1, sec. 8, clause 17, Congress has power to exercise exclusive legislation in all cases over them, and there being no act of express or implied recession of said lands by Congress, the State of Maryland has no power or jurisdiction over them in any case whatsoever, except as expressly allowed by Congress, and, *a fortiori*, has no power to tax said lands or any interest or estate therein. (Record, pages 4 and 5.)

THE LAW.

I.

Before coming to the main questions to be decided by the Court, we may be pardoned, if, even at the risk of pointing out the obvious, we discuss certain preliminary questions, particularly, the nature of the respective interests of the Federal Government and of the plaintiff in error in land granted on these extraordinary terms to the plaintiff in error by Congress.

A. Congress authorized the conveyance of this land to the plaintiff in error upon several conditions, one precedent in its nature, the others subsequent, or, as one might say,

continuing. The condition precedent was that a dry dock of a certain prescribed kind and size should be built upon the land within two years from the date of the conveyance, which was done. The other conditions are:

1. That the United States shall have the perpetual use of the dry dock, so constructed, for the prompt examination and repair of vessels, belonging to them, free of charge for docking.

2. That the property shall never be diverted to any other use than that named in the Act. And

3. That the dry dock shall never be permitted to be unfit for use for a period of six months, or more.

Upon the happening of any one of these contingencies, the property conveyed, with all its privileges and appurtenances, shall revert to and become the absolute property of the United States, thereby destroying any possible right of State taxation.

We must presume, therefore, and, in fact, the defendants in error are estopped to deny, that the dry dock of the specified kind was erected and has been maintained, that the land has not been diverted to any other use than the construction and maintenance of said dock and other uses, incidental thereto or connected therewith, and that the United States, whenever required, have always had the free and prompt use of this dry dock for the proper purposes of vessels belonging to the various branches of the governmental service. It may also be remarked that although it is the potential right of the United States with which we have to do, it is a matter of fact that the government does make use of the dry dock, and, *non constat*, that it might make constant use of it to such an extent as to deprive the plaintiff in error of any right to let it to any other party, and so as to amount to a practical confiscation of it for the time being —a condition of things which can be easily imagined in case of a war of magnitude, or other great public crisis.

The Court of Appeals of Maryland described the legal aspects of the respective interests of the United States and of the plaintiff in error in the lands, in the following words, (Record, page 26): "The appellant holds that lot under a conditional grant from the United States as a site for a dry dock;" and again (Record, page 28): "Under this conveyance, *i. e.*, the deed from the (Secretary of War), the appellant did not acquire the absolute fee simple title to the land, but took only an estate therein limited to a particular use under special conditions and liable to be defeated upon a misuser or non-user. * * *"

But we think, however, a more accurate description of thes estates and their incidents, so far at least as they need to be considered here, is to be found in the recent and somewhat similar case of—

Northern Pac. Rw. Co. vs. Townsend, 190 U. S. 267.

That case involved the question as to whether lands granted by Congress to the Northern Pacific Railway Company for a right of way were subject to acquisition of title by adverse possession for the period required by the statute of the State in which they lie. In describing the nature of the title of the railway company, Mr. Justice White, speaking for the Court, said at page 271:

"Manifestly, the land forming the right-of-way was not granted with the intent that it might be absolutely disposed of at the volition of the Company. On the contrary, the grant was explicitly stated to be for a designated purpose—one which negatived the existence of power to voluntarily alienate the right-of-way or any portion thereof. The substantial consideration inducing the grant was the perpetual use of the land for the legitimate purposes of the railroad, just as though the land had been conveyed in terms to have and to hold the same so long as it was used for the railroad right of way. In effect the grant was a limited fee,

made on an implied condition of reverter in the event that the Company ceased to use or retain the land for the purpose for which it was granted."

It will be at once observed that one superficial difference between the nature of the Railway Company's title there and the title of the Dry Dock Company to the lands in question exists in the fact that in this case the right of reverter absolute is expressly set forth in the grant. But on looking at the two cases more closely this apparent dissimilarity disappears, and we submit that there is no part of the Court's description of the Railway Company's title which is not equally applicable to that of the Dry Dock Company here.

Applying the rule of that decision here, but bearing in mind that by virtue of the perpetual right of free user of the dry dock, there exists an added element of governmental interest, we submit that it cannot be gainsaid, that by the acceptance of the conveyance and the conditions upon which it was made, which acceptance is necessarily implied from entering into possession of the land under the grant, the plaintiff in error became possessed of an estate in this land very different in its nature and incidents from any in which the government and governmental rights and obligations are not involved, that it thereby undertook certain duties and obligations to the United States, and that Congress manifested its intention that title to and possession of this land by the plaintiff in error are necessary to the proper discharge of these duties and obligations. Consequently, it cannot be permitted that this title and possession should be interfered with or obstructed by any other power or authority, or that the plaintiff in error should be stripped of that title and possession, save by the United States,—and then only for failure to observe and perform those duties and obligations.

It, therefore, becomes apparent, we submit, that a more accurate definition of the estate of the United States in this land may be said to be "a right of reverter absolute, subject

to the performance of certain continuing conditions for the sole benefit of the reversioner, and conferring upon the reversioner certain valuable present rights of user in the land itself." But whether we be right in this definition or not, *the fact remains that* the United States have rights in the land, of a kind absolutely essential to the performance of its national functions, coupled with a right of reverter in case those rights are denied, obstructed or abridged at any time.

B. It is also to be premised that these interests or estates of the United States and of the plaintiff in error both constitute "property" in one sense of that word. They are clearly not "property" in the sense of things material, as land itself or a horse is. But they are "property" according to the more usual legal meaning of "a right or interest which a man has in lands and chattels to the exclusion of others," in which sense it embraces every species of valuable right and interest in things material. In a word, "property" may be the land or thing itself, or it may be a right, absolute or qualified, in the land or thing.

Austin's Jurisprudence (Campbell's notes), vol. 2, sec. 1051.

Bouvier's Law Dict. (1897), "Property," vol. 2, page 780.

Anderson's Law Dict. (1889), "Property," page 835.

As Mr. Austin points out, the word "property" has still other meanings, as, for instance, a "right of property" as contradistinguished from "a right of possession," all equally well accepted in legal nomenclature; and we shall hereafter endeavor with all respect to point out, that the learned Courts of the State of Maryland have been misled in their decisions of this case by the ambiguity that is necessarily liable to arise from the manifold use of this word.

C. It is sufficient at this time to say that all "property" is not of necessity taxed by the State of Maryland. It has uniformly been held that the provision of the Maryland Declaration of Rights, Art. 1, Sec. 15, "but every person in the State, or person holding property therein, ought to contribute his proportion of public taxes for the support of the government, according to his actual worth in real or personal property," was not violated by certain express exemptions.

Buchanan vs. County Commissioners, 47 Md. 286.

And, too, it has been held by the Maryland Courts that certain classes of "property" and rights, highly valuable in themselves, are not the subject of taxation at all, and also that there is "property," which though taxable in its nature, does not fall within the true meaning of the tax laws of the State, as they now stand, thereby constituting what may be termed, for want of a better definition, "implied exemptions."

Baltimore City vs. Johnson, 96 Md. 737, particularly at pages 746 and 747.

Another case to the same point was the case of The President, etc., of the Balto. and Frederick Turnpike Co. vs. The Appeal Tax Court, decided by Chief Judge H. D. Harlan, of the Baltimore City Bench, on May 6, 1903, the opinion being published in the Baltimore Daily Record of May 7, 1903. The case involved the right of the Appeal Tax Court to assess for taxation the easement or right-of-way of the Turnpike Company within the limits of Baltimore city, and though it indirectly involved the right to tax the easements of all the public service corporations of Baltimore, no appeal was taken from Judge Harlan's decision, holding the right-of-way exempt under the existing tax laws. The learned Judge, after pointing out that the statute made provision for the taxation of "all real properties in this State belonging to any corporation incorporated by or under the laws of this State," and various other provisions of the law applicable to the question before him, particularly one section (Art. 81,

Sec. 178), whereby it is provided that "Assessors shall personally inspect all real estate in their respective districts," concludes, "Intangible, incorporeal things are not capable of inspection. The property, which is subject to the easement can be seen, but the easement—the right—exists only in contemplation of law and can not be seen or inspected. All freehold estates are real property, *but we know that what is assessed is the corporeal property in which the estate exists*, and that there never has been any practice in this State to value to their respective owners for purposes of taxation, the several estates in the property where there are such.

"In Appeal Tax Court vs. Western Md. R. R. Co. et al., 50 Md. 301–2, the Court of Appeals said 'that an easement enjoyed in the bed of a public street may be assessed and taxed as real estate,' but as has been heretofore pointed out in this opinion, the question here is not whether this may be done, but whether the Legislature meant it to be done under the words of section 141."

In a word, there are some classes of "property" where the power to tax is wholly wanting, and there are others, for the taxation of which no provision has been made by the Legislature, though it possesses the power.

Consequently, it does not of necessity follow that the land in question, or the interest of the plaintiff in error therein, is subject to assessment and taxation. We shall endeavor to show that the land itself, as such, has been in fact assessed, and that this assessment is necessarily void, because it constitutes an attempt to tax the property of the United States; but we shall also contend that, even if this be an assessment upon the interest or estate of the plaintiff in error in the land, it is none the less void, not because it, this estate, is not "property," but because, even if such an estate standing alone constitutes "property," for the taxation of which provision is made by the Statutes of Maryland, and does not fall within the class of "implied exceptions," above mentioned, nevertheless such an assessment

and attempt at taxation would be inoperative in this case, by reason of the fact that the United States also have an interest in this land, and hence no other estate in the land may be taxed without the consent of Congress. Such property (meaning thereby corporeal property) is, we contend, withdrawn from the body of taxable property of the State so long as the United States has any such interest.

II.

The State of Maryland has no Power to Tax the Property of the United States, Including Land in which the United States have an Interest or Estate.

This principle of law is now so fundamentally established in our system that it may be said to be axiomatic. It is provided by Maryland Code of Public General Laws,

> Title, "Revenue and Taxes," sub-title, "Exemptions," Art. 81, Sec. 4, (as amended by Act of 1897, Ch. 120):

"The provisions of this article shall not apply to any bonds or stocks or evidence of indebtedness issued by the United States belonging to any residents of this State, nor to any property in this State belonging to the United States" * * *

This is but legislative recognition of a fundamental doctrine of our law.

> Black on Tax Titles, (1893,) sec. 35, etc.
> Cooley on Taxation (3d Ed.,) 135-139.
> Howell vs. State, 3 Gill, 14.
> McCulloh vs. Maryland, 4 Wheaton, 316.
> Van Brocklin vs. Tennessee, 117 U. S. 151.
> Wisconsin Cent. R. R. Co. vs. Price Co. 133 U. S. 496.

In the last mentioned case Mr. Justice Field, speaking for the Court, said at page 504:

"It is familiar law that a State has no power to tax the property of the United States within its limits. This exemption of their property from State taxation—and by State taxation we mean taxation by authority of the State, whether it be strictly for state purposes or for mere local and special objects—is founded upon that principle which inheres in every independent government, that it must be free from any such interference of another government as may tend to destroy its power or impair their efficiency. If the property of the United States could be subjected to taxation by the State the object and extent of the taxation would be subject to the State's discretion. It might extend to buildings and other property essential to the discharge of the ordinary business of the National government, and in the enforcement of the tax those buildings might be taken from the possession and use of the United States. The constitution vests in Congress the power "to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States. And this implies an exclusion of all other authority over the property which could interfere with this right or obstruct its exercise. Van Brocklin vs. Tennessee, 117 U. S. 151, 168."

It is equally familiar that this doctrine is applicable not only in cases where the United States are vested with full legal and equitable title to the property sought to be taxed, but to all cases of lands in which the United States have any real interest, and it fails to apply only in cases when the United States may be vested with the mere dry legal title, full beneficial or equitable ownership and title being vested in others, as in—

Carroll vs. Safford, 3 Howard, 441.
Witherspoon vs. Duncan, 4 Wall. 210, and other cases hereinafter referred to.

Judge Cooley in his elementary work on the Principles of Constitutional Law, at page 60, declares succinctly: "Land

of the United States lying within a State is not taxable by the State. If such land has been bought or taken up by an individual, it is not subject to State taxation, so long as something remains to be done by the individual to perfect his right to a patent from the United States."

And examples of this rule may be found in the following cases:

Kansas Pac. Rw. Co. vs. Prescott, 16 Wall. 603.
Union Pac. R. R. Co. vs. McShane, 22 Wall. 444.
Tucker vs. Ferguson, 22 Wall. 527.
Forbes vs. Gracey, 94 U. S. 762.
Colorado Co. vs. Commissioners, 95 U. S. 289.
Northern Pac. Rw. Co. vs. Traill Co., 115 U. S. 600.
Van Brocklin vs. Tenn., *supra*.
Wisconsin Cent. R. R. Co. vs. Price Co., *supra*.

Therefore, we submit, if the fact be as we have stated, namely, that the assessment in this case is laid upon the land, it is, *a fortiori*, laid upon the interest of the United States, its "property," and is, therefore, void.

III.

The Assessment in this Case is Laid Upon the Land, as Such, and not Upon the Interest of the Plaintiff in Error Therein.

On the *facts*, as disclosed by the record, there can be, we think, no doubt whatsoever that the assessment complained of is an assessment on the land itself. As we shall point out, the original assessment itself was so made by the Appeal Tax Court, and, as the Court of Appeals itself states (if indeed such testimony be needed), the Baltimore City Court "confirmed" the action of the Appeal Tax Court, while it is, of course, patent that the judgment of the Court of Appeals in terms "affirmed" the order of the Baltimore City Court.

But, as we shall call to the Court's attention later, the opinion of the Court of Appeals, which, be it said, is no part of its judgment or decree, does undoubtedly also state that this assessment is upon the interest of the plaintiff in error in the land, and it therefore becomes necessary to inquire what the manner and nature of the assessment was.

A. It is worthy of notice that the Court of Appeals also said, in the opening sentence of its opinion (Record, page 26): "This is an appeal from an order of the Baltimore City City Court, confirming the action of the Appeal Tax Court *in assessing for taxation the lot of ground* and dry dock of the appellant situated at Locust Point in said city," which statement contains within itself two propositions of fact:

1. The original assessment made by the Appeal Tax Court was upon the land.

2. This assessment was confirmed by the Baltimore City Court.

In both respects, the Court of Appeals is absolutely accurate. The Record shows beyond the possibility of contention, that the original assessment was upon the land, as such.

The first notice of the intention to make any assessment whatsoever, given by the Appeal Tax Court through its assessor, Williams, notified the plaintiff in error "*that the valuation of its lot * * * has been assessed * * * for 1903.*" (Record, page 21.)

At the hearing in the Baltimore City Court, the Acting Chief Assessor of the Appeal Tax Court, Coblens, testified that "all assessments of real estate in the city of Baltimore are made upon the whole value of such real estate without regard to particular interests therein." (Record, page 24.)

The fifth paragraph of the petition of appeal to the Baltimore City Court avers, "that the Appeal Tax Court did on the 30th day of September, 1902, assess *said real estate* for the purposes of taxation for the year 1903, *to your petitioner as owner of the same.* * * *" (Record, page 9.)

This allegation is in terms admitted to be true by the first paragraph of the Agreement of Counsel (Record, page 18); and it is also by the fifth paragraph of the same instrument admitted, "that the assessment complained of is an assessment upon and covers *all the land* in the possession of the appellant corporation under the grant from the United States Government, referred to in the petition and appeal, and the riparian rights and appurtenances of said lands, including the piers; and that *said assessment is made upon said land* and appurtenances, as though it were the property of said appellant corporation; * * *" (Record, page 20.)

The prayer offered by the plaintiff in error, (Record, page 24,) to which no special exception was filed, as was necessary under the Maryland practice, if evidence were lacking of any proposition of fact contained in it, also shows that the point at issue involved an assessment upon the land.

The order of the Baltimore City Court (Record, page 23,) provided "that the property concerned in the appeal in this case, is lawfully subject to taxation by the State of Maryland and the city of Baltimore, * * *" thus confirming, to quote the Court of Appeals, the action of the Appeal Tax Court.

This was the order from which the appeal was taken to the Court of Appeals, and it is the order which that Court "affirmed," without alteration in any respect by its final judgment, entered April 2, 1903, (Record, page 29,) which judgment in its turn is now sought to be reversed by the writ of error here. Such are the facts.

B. Moreover, we maintain that such an assessment, *i. e.*, an assessment upon the land itself, without regard to the various estates of those having interests in it—is the only form of assessment for which provision is made by the statutes of the State of Maryland. By this we do not mean that the State *may not* tax *estates* in land, but in fact it *does not*. The question is not one of power, but of method. The system

does not provide the machinery for the making of any other kind of assessment and for enforcing the payment of the taxes levied thereunder. This appears both from the statutes providing the method of making of assessments, and from the provisions of the law regarding sales for non-payment of taxes, but more particularly the latter.

The Statute, under which the assessment here was made, is found in Sections 145 and following, of Article 4 of the Code of Public Local Laws of Maryland, as amended by Chapter 123 of the Acts of 1898, known as the "Baltimore City Charter."

By section 148 every assessor is directed to inform himself, by all lawful means, of *all property, real and personal,* and stock or investments in the city liable to taxation and assessment and which may have been omitted in the assessments * * * and *to value the same* at the full cash value thereof, and to make return to the Appeal Tax Court; and for the purposes of said section the said assessors are thereby clothed with the powers of general assessors.

By section 150 it is provided "that before increasing the assessment of any property theretofore assessed, or adding any new property not valued and returned to them by the proper assessor, it shall be the duty of the said Court, as the case may be, to notify the owner of such property by written or printed summons containing such interrogatories in regard to the property as they may require to be answered on oath. * * * In case such owner, after being summoned, shall fail to answer in writing on oath, or to appear and answer orally such interrogatories, *such Court,* after such return day has passed, *may proceed* to revalue and reassess said property, *or add such new property,* according to its best judgment and information in the premises * * *"

By section 164 A, it is also provided that "*the Appeal Tax Court of Baltimore City shall have the power at any time* to value and assess all personal property and to revise such

valuations and assessments *and to review all valuations and assessments of real property in said city*, and to lower or increase said assessments of real or personal property *and to take steps for the discovery and assessment of all unassessed property of every kind.* * * * Whenever said Court shall propose to alter or change any assessment or make any new assessment, they shall, before such assessment is made, give at least five days' notice thereof in writing to the owner of the property to be assessed or reassessed, and if any owner be not found within the limits of said city, then to the person in possession of the property to be assessed, or in whose custody the same may be, *or if it be land and no one be in apparent occupancy thereof*, then by a notice posted on said land. * * * "

We submit that the word "property," when it appears in these sections, means things material, not things incorporeal, lands or chattels, not rights, interest and estates, and though it is required that land or other property shall be assessed to the owner, if found, it is none the less required that it shall be assessed and taxed, whether the owner be found or not. The purposes of this are manifest. The obvious fairness of giving notice to the owner of the various steps in the assessment, levy and collection of taxes is one object, and another is the resultant simplicity in the administration of the tax laws. But the act of assessing property to an individual is efficacious, its last analysis, only to create a *personal* liability against the person to whom the taxes are charged, when levied. For, as we have shown, provision is expressly made for the assessment of lands where the owner is unknown, and, consequently, such a charging of the assessment and resultant taxes is not essential to validity of the assessment and levy. Conversely, it is also true that in order to create a liability *in rem* against the land itself, the land must be assessed without regard to the variety of estates held in it, although it is also true that the assessment to the proper owner or occupant has been, under some statutes, made essential to the validity of the assessment and levy. And

this is none the less true, because it has been held in Maryland that *persons*, not property, are taxed. For their property is assessed, and the resultant taxes are levied against and constitute a lien upon it, and their payment of them is enforceable, if by no other means, through a sale of the property, the *res* itself.

Cooley on Taxation (3d Ed.), page 721, *et seq.*
Baltimore vs. Canton Company, 63 Md. 218, 234-5.
Mayor vs. Boyd, 64 Md. 10.
Cooper vs. Holmes, 71 Md. 20-30.

But, as we have already remarked, this feature of the tax laws of Maryland is the more emphasized by the sections of the statutes relating to sales of land for non-payment of taxes. The laws in force in Baltimore City are contained in sections 43, and following, of the City Charter.

Section 143 provides: "Whenever it shall become necessary to sell any part or parcel of ground in the city of Baltimore, improved or unimproved, for the payment of any taxes or assessments, of any nature or kind whatever, levied or charged, the City Collector shall first give notice by advertisement. * * *"

Section 44 provides: "The City Collector shall require the purchaser of such property on the day of sale, or the day next succeeding, to pay on account of said purchase the amount assessed or taxed on the lot so sold."

Sections 45 and 46 provide for the execution of the deed for the lands sold and the investment of such portion of the proceeds of sale as may exceed the amount of overdue taxes, interest charges and cost.

Section 47 provides: "When any lot or parcel of ground in the said City shall be sold by reason of the non-payment of the tax or assessment due thereon, the owner or other person having an estate or interest therein shall have power to redeem the same. * * *"

Section 48 provides the method for procuring a final ratification of a sale made under the preceding sections. It reads:

"In all cases where lands held in fee-simple or by lease have been sold, or shall be sold for payment of taxes in arrears, according to existing laws, it shall be the duty of the City Collector to report the said sale, together with all the proceedings had in relation thereto, to the Circuit Court of said city. The Court to which such report shall be made shall examine the said proceedings, and if the same appear to be regular, and the provisions of law in relation thereto have been complied with, shall order notice to be given by advertisement published in such newspapers as the Court shall direct, *warning all persons interested in the property sold to be and appear by a certain day in said notice to be named, to show cause, if any they have, why said sale should not be ratified and confirmed; and if no cause or an insufficient cause be shown against the said ratification, the said sale shall, by order of said Court, be ratified and confirmed, and the purchaser shall, on the payment of the purchase money, have a good title to the property sold;* * * *."

This is the only method of making a sale, and the provisions of the sections are highly illuminating of the particular question now at issue. Authority is at hand, if authority indeed be needed, to declare the true effect of these sections. But irrespective of authority, can it be doubted that a sale made under the provisions of these sections, is and can be only a sale of the lot of ground itself? Provision is expressly made by section 47 for any person having an interest or estate in land, so sold, other than the owner to whom it is assessed, to redeem, thus making it clear, if the words of section 44 were open to doubt, that the sale extinguished all interests, estates and titles and not merely that of the "owner"—in other words, that the sale was one of property in the material sense, and not of property in the sense of rights, interests or estates in the land or thing material sold.

But this is not all. The provision of section 48 is that after the conditions of the sale have been complied with and the required formalities observed, "the purchaser shall have a good title to the property sold." This has been held by the Court of Appeals of Maryland to mean that the purchaser shall hold the lands purchased in fee simple.

Cooper vs. Holmes, 71 Md. 20.

That case involved the construction of the local tax law of Prince George's county, Maryland, and the validity of a tax sale made in pursuance of its terms. Judge McSherry, then an associate judge, but now chief judge of the Court of Appeals, wrote the opinion. He said on pages 26 and 27: "What has just been said with regard to the effect of the order of ratification has relation to sales made under the statutes alluded to. It is claimed, however, that the sale in question here was made under a local law, the Act of 1882, ch. 317, which, it is insisted, does not give to the order of ratification the force and effect accorded it by the Act of 1874, ch. 483. There is some difference between the two statutes, and wherever they conflict, if they do conflict at all, the local law must prevail. (Code, art. 1, sec. 10.) The general law declares that if no cause, or an insufficient cause be shown, the sale shall, by order of Court be ratified and confirmed, and the purchaser shall, on payment of the purchase money, *have a good title to the property sold.*" (The italics are the Court's.) The local law provides for no order *nisi*, but directs the Court to ratify the sale, if it shall appear that the collector "has complied with the requirements of the Act and the existing laws of the State of Maryland not inconsistent with the provisions of this Act, * * * either party to have the right of appeal to the Court of Appeals; and if not redeemed within the time prescribed by existing law, the treasurer shall convey the same *in fee simple* (the Court's italics again) to the purchaser thereof." Whilst the general law declares that the purchaser shall have a good title, the local law, omitting those words uses others of substantially

the same import, viz: "the treasurer shall convey the same *in fee simple* (Court's italics) to the purchaser." The difference between the Acts consists rather in the form of expressing the same design, than in any substantially repugnant provisions."

The words of the general statute, quoted by Judge McSherry, are identical with those of the Baltimore City Charter, and it therefore follows that a purchaser at a tax sale in Baltimore city, has the right to demand, and, *e converso*, the City Collector may offer for sale only, a fee simple title to the land levied upon, free from the conflicting rights, claims, interests and estates of other parties, and free from all incumbrances, liens and conditions.

See also—Cooley on Taxation (3d Ed.), page 960, *et seq.*
Black on Tax Titles (1893), secs. 419-22, incl.
Burroughs on Taxation (1877) page 346.
Textor vs. Shipley, 86 Md. 424, at page 438.
Northern Pacific R. R. Co. vs. Traill Co. 115 U. S., 600.
Heffner vs. Northwestern Mut. Life. Ins. Co., 123 U. S. 747.
Emery vs. Boston Terminal Co., 178 Mass. 172.

This being the doctrine hitherto enunciated and the construction hitherto put upon the statutes referred to, by the Courts of Maryland, it will not be presumed, in the absence of the most express and unequivocal statement, that the Court of Appeals intended to qualify its previous decisions, when it said in the course of the opinion in this case (Record, page 29): "It has always been the custom and policy of this State, when it became necessary to sell for non-payment of taxes land in which several parties held different estates, *all of which were subject to assessment and taxation*, to sell the fee simple estate in exercise of its sovereign power (Cooper vs. Holmes, 71 Md. 20; Textor vs. Shipley, 86 Md. 424), but it is manifest that the sov-

ereign power of the State does not embrace within its operation the right or estate of the Federal Government in the land now in question."

And while we respectfully submit that the learned Court has not told the whole story, and that it should have added to the words "custom and policy of this State," the additional phrase "in pursuance of a mandatory provision of the Statutes, consonant in their effect with a simple provision of general law," which, in view of an universally accepted rule of interpretation, must be most strictly construed and held to confine the powers and duties of officers acting thereunder to the strict letter of their expressed authority, (See Polk vs. Rose, 25 Md., 153) we also contend that even if the Collectors and Treasurers of Maryland can be held to have power to sell partial interests or estate in land, short of the land itself, and all estates, interests and rights in it, still such a proceeding and sale is not possible in this case, nor can it be permitted by this Court, following a well-established line of decisions, as we shall hereafter endeavor to show.

C. If we be right in this, that the assessment *can* be made only upon the land, and not upon the several estates in it (as indeed we have sought to show has in fact been done as well by the Court of Appeals as by the assessors and the lower Court of Maryland), then the assessment is but a step in the attempted taxation of property of the United States and is necessarily void. But supposing, for the sake of the argument only, that the assessment has been made only upon the interest of the plaintiff in error in the land, and not upon the land itself, it is interesting to observe the situation that would then result.

The case of Moriarty vs. Boone County, 39 Iowa, 634, is an authority in point. There the Supreme Court of Iowa had occasion to pass upon the validity of an assessment made under the Statute of Iowa, which expressly permits the taxation of interests in land, upon the *interest* of a homesteader in government lands which he was in the course of

taking up under the Act of Congress, but to which his title was not yet complete.

The Court points out with great clearness the impossible situation to which an attempt to enforce the assessment by sale would lead, saying, at page 638: "But suppose after the tax sale the person making the homestead entry should abandon his actual residence upon the lands for a period of more than six months. In that case, what becomes of the lien for delinquent taxes, and what interest does the treasurer's deed convey? The land reverts to the Government, the lien is extinguished and the deed of the treasurer becomes mere waste paper. * * * It is conceded the legal title need not of necessity vest in one before he becomes liable for taxes. But he must have a more tangible interest than one dependent upon continued occupancy for its existence and liable to annihilation by an absence of six months. No case can be found in this State in which such an interest as the one under consideration has been held liable to taxation. All of them will be found to be cases where some corporation or individual, although not possessed of the legal title, yet is in a position to be entitled to a patent from the United States."

Applying the method of the Supreme Court of Iowa in that case to the facts of the present, we find that this is the position which would be reached. The City Collector, if he offered the land for sale in fee simple, would make a void sale, for two reasons, either because he would thereby be attempting to make sale of property of the United States, which is confessedly beyond his power, or because, if for this reason it be contended that his sale must be held to apply only to that which he could lawfully sell, *i. e.*, the estate of the plaintiff in error, then the purchaser would not be getting what had been advertised and offered, and what it is provided by statute he should receive—namely, an estate in fee simple in the land purchased. In either event, the sale would be set aside at the instance of the purchaser, or any other person having an interest in the land.

But supposing that the City Collector has authority to offer for sale the interest of the plaintiff in error alone in the land, even in the teeth of the statutes and decisions which we have referred to—what could he sell? He could not offer for sale an estate which was obliged *passively* to suffer or permit other rights of user in the land in which it existed, such as a fee simple subject to a simple right of way or flowage of water. (See opinion of Judge Stockbridge, Record, page 22.) In other words, the Collector could not offer for sale *the land*, subject to the rights of others therein. In order to preserve properly all the rights and estate of the plaintiff in error in this land, the City Collector would have to offer the land, subject to an *actual, continuing, costly obligation, namely, that of maintaining and operating the dry dock*, keeping it perpetually in good repair, and always ready for use by the United States Government free of charge. Has the case ever before been recorded, where a City Collector, in order to enforce the payment of taxes, sold the "privilege" to expend large sums of money annually, willy-nilly?

Moreover, a fee simple title now in Maryland, as in most other States, has been held to be an allodial title,—a title not "holden of" any one.

Matthews vs. Ward, 10 G. & J. 443.

Could, therefore, a sale of the land in question be made, which would not construct or interfere with the title and rights of the United States therein, and which would not at the same time result in the purchaser most unequivocally "holding the land of" the United States, subject to the terms and conditions of the grant in question? Could such a title be considered allodial?

We do not, of course, maintain that the grant itself is not of value, or that the possession of the land subject to its conditions is a financial burden to the plaintiff in error, but the fact remains that a sale by the City Collector would confer necessarily upon the purchaser a "right" to expend the

sums of money which are necessary for the maintenance and operation of the dry dock, coupled with a restriction that the land could never be diverted to any use whatsoever other than maintenance and operation of such dock.

Finally, the plaintiff in error would have it absolutely in its power to defeat the remedy by sale and the title of the purchaser to the land, or estate therein, if you will, sold. For during the year given by law for redemption, its estate could be forfeited by any one of a variety of acts of omission or commission, with the result that the whole land and all title to it would be vested in the United States alone, and the purchaser have lost all rights in or over it.

Consequently, we submit that the Statutes of Maryland, as constructed by the Court of Appeals of this State, make no provision for the taxation of estates in land, but only for the assessment and taxation of land itself, and that they were in fact fully and strictly observed in making the assessment here; but we also contend that even if they do permit of assessments upon partial interests or estates in land, and that the Court has such an assessment before it in this case, it is none the less void, and the provisions of the Statutes in this respect must of necessity be inoperative here, from the peculiar conditions of this case, growing out of the interest of the United States in this land. It, therefore, becomes imperative to inquire upon what theory or theories the Courts of Maryland base or justify their action in making the assessment now complained of.

IV.

The theories of the Baltimore City Court and of the Court of Appeals of Maryland on which those Courts sustained the State's right to tax.

Both of the state courts recognized the existence of the doctrine upon which the exemption of Federal property from state taxation rests; but we submit that neither of them gave that doctrine its fullest application or completely

realized its scope. In any event, it becomes necessary to inquire with particularity how the right to tax was sustained and upon what grounds it was put.

On the one hand, the learned Judge of the Baltimore City Court dealt with the problem in the following manner:

"It is of course evident," says Judge Stockbridge (Record, page 22), "from the refusal of the prayer of the petitioner, that in the view of the Court the property upon which the aseessment has been made is not property of the United States Government in any sense, but it is property of the corporation, the petitioner. It is, however, property charged with a certain right of use, under definite conditions, by the United States Government, and the character of the uses to which it can be put is limited both by the Act of Congress and the terms of the grant. These facts do not, in my judgment, at all affect the question of ownership of the property, but rather constitute a charge upon the property not very dissimilar from what would exist, if the property was held by the petitioner subject to an easement such as a right of way or flowage of water, and which charge is, therefore, a proper element for consideration in the determination of the value to be taken in the sense of a market value or value for purposes of taxation. There is probably no class of property which it is more difficult to place a proper valuation on than a lot such as this, and opinions of individuals, therefore, may naturally be expected to vary widely, since those opinions must inevitably be largely conjectural." And the learned judge then proceeded to ascertain, as best he could, the value of like lands unencumbered, and after making allowance for the peculiar conditions of this property, *fixed its value, not* the value of the interest or estate of the plaintiff in error therein, at the sum of $70,650.

It is apparent that the learned judge used the word "property" as equivalent to land or real estate, and not in the sense of a right in the land, and it is also very evident that he saw and appreciated the difficulties in the way of the

right to tax, and made an earnest effort to work out a theory upon which the right could be upheld. But we respectfully submit, he failed. In our view, the land could no more be taxed, without taxing the right of the holder of the easement in gross of the judge's theory, than without taxing the servient estate of the plaintiff in error, and still less could it be sold under the Maryland statute without extinguishing those dominant rights of the United States. And it may also be repeated, that in whatever sense the learned judge used the word "property" in his opinion, or on whatever theory he proceeded, he confirmed the action of the Appeal Tax Court in making an assessment on the lot of ground itself. For this we have the express statement of the Court of Appeals.

The Court of Appeals, on the other hand, states the proposition in this way (Record, page 26): "It is conceded that lands held by the United States are not taxable by the State within whose boundaries they lie, and that this disability remains effective until the Government sells the lands, when it terminates. * * * The only question in this case is whether the transaction between the United States and the appellant under which the latter is now in possession and enjoyment of the land was such as to terminate its exemption from taxation. * * *"

And again, on page 28: "* * * The deed followed the terms of the Act of Congress, and conveyed the land to the appellant upon the conditions therein set forth.

"Under this conveyance the appellant did not acquire the absolute fee simple title to the land but took only an estate therein limited to a particular use under special conditions, and liable to be defeated upon a misuser or a nonuser; yet it did take a valuable interest in the land of which it has been in full possession and enjoyment every since. The deed to the appellant contains no restraint upon the alienation of the estate conveyed by it, which partakes of all the essential features of property. The fact that the United States

retains and may at some future time exercise the right to retake possession of the land upon a breach of the conditions of the grant ought not, when no such breach is alleged, to enable the appellant to escape its just share of taxation. If the land should ever revert to the United States under the terms of the grant the taxable interest in it would be destroyed and in that event the assessment of it should be stricken off the books of the tax department. Or if the United States should in the exercise of its reserved right use the dock on the land for its own vessels continually or to such an extent as to materially deprive the appellant of its possession and enjoyment, that circumstance would form proper ground for a suitable abatement for the time being of the assessment of the property for the purposes of State taxation. * * *"

Again at page 29—"Of course if it should ever become necessary for the State or city to sell this property of the appellant for the non-payment of taxes nothing more could be sold than its conditional estate in the land and the permanent improvements thereon, subject to all of the rights of the United States therein. * * *"

"We hold that the conditional interest or estate of the appellant in this land, subject to the rights of the United States therein, constitute property within the meaning of section 2 of article 81 of the Code, and is taxable by the State and the city of Baltimore. In view of the fact that the situation of the title to the land is such that the absolute fee therein cannot be taxed, and therefore could not be sold for non-payment of taxes, the assessment books should be so modified as to show that the estate assessed is subject to the right and interest of the United States in the land and improvements."

The Court of Appeals thereupon proceeded to affirm the order of the Baltimore City Court, which made an assessment upon the land, as such!

We have pointed out that Judge Stockbridge used the word "property" as equivalent to the land itself, and that in our view the learned judge's opinion is open to the criticism, that it loses sight altogether of the right of reverter in the United States, consequent upon a misuser or a nonuser of the land, and also that the learned judge failed to take into account that that right, or interest, or estate, would necessarily be destroyed by a sale for the enforcement of the taxes levied upon the *land*, as such, though he was of the opinion that the land itself must be assessed in order to make a valid levy, and not the interest of the plaintiff in error therein. Whereas the Court of Appeals of Maryland, though in the opening sentence of its opinion, it states that the assessment was upon "the lot of ground," and it affirmed Judge Stockbridge's order, which "confirmed" the action ot the Appeal Tax Court, in making an assessment upon the land, uses the word "property" not in the sense in which it is used by the Maryland Statutes, namely, as meaning corporeal things or land, but as meaning any interest, estate or right in land or other material thing, and, throughout the balance of its opinion, deals with the assessment as though it was made only upon the interest of the plaintiff in error in the land.

The argument of the Court of Appeals amounts to this: "This interest of the Dry Dock Company in this land is property, and is therefore taxable." But as we shall endeavor to show, this is precisely the same argument advanced by counsel and sustained by State Courts in a line of cases which have come before this Court, and in every one of which this Court has held the argument unsound, and declared the attempt at taxation made in pursuance of it void and nugatory.

Let us consider this line of cases. But before doing so, we desire again to state that we do not take the ground, and it is not in any sense essential to our argument, that the Maryland Court of Appeals has misconstrued the statutes of its own State. For we contend that whatever the true

meaning of the Maryland statutes, and whether or not it is permissible under them to assess interests or estates in land, as distinguished from the land itself, the rule of the cases about to be called to the Court's attention is equally applicable, and equally prohibits the assessment and taxation of the interest of the plaintiff in error in this land.

V.

THE STATE OF MARYLAND MAY NOT TAX THE INTEREST OF A PRIVATE PARTY IN LANDS IN WHICH THE UNITED STATES ALSO HAVE AN INTEREST, WITHOUT THE CONSENT OF THE UNITED STATES.

This is the principle underlying our second assignment of error. In stating it, we are fully aware that there are some decisions of state courts to the contrary, but we submit that the reasoning upon which they are based is unsound, and that the true doctrine—the doctrine of this Court, which must be controlling—is as we have stated it.

Let us examine the cases.

The case of Kansas Pacific Railway Company vs. Prescott, 16 Wall. 603, involved the right of the State to tax lands granted to the Railway Company by the United States, upon condition that before the lands be conveyed to the company the cost of surveying, selecting and conveying them should first be paid. These costs had not been paid, and the lands had not been conveyed. But they had been surveyed and ascertained, and the right to a patent was complete upon the payment of the costs. Mr. Mohler, counsel for the State of Kansas, in his argument in support of the right to tax, followed the same line of argument as that pursued by the Court of Appeals of Maryland, in this case, contending that the equitable, though inchoate, right of the Railway Company constituted property, within the definition of Chief Justice Marshall in Delassus vs. U. S., 9 Peters, 133, and

that it was therefore taxable. "*If such inchoate right is 'property,'*" says Mr. Mohler, "*why not taxable?*"

(See Lawyers' Ed. Sup. Ct. Reps., Book 21, page 374.)

But this Court, avoiding this confusion of ideas, and declining to accede to this view, said, Mr. Justice Miller delivering the opinion (page 608):

"While we recognize the doctrine heretofore laid down by this Court, that lands sold by the United States may be taxed before they have parted with the legal title by issuing a patent, it is to be understood as applicable to cases where the right to the patent is complete, and the equitable title is fully vested in the party without any thing more to be paid or any act to be done going to the foundation of this right.

The present case does not fall within that principle. Two important acts remain to be done, the failure to do which may wholly defeat the right of the company to a patent for these lands.

The first is the payment of the costs of surveying, It is admitted that this has never been done in the present case. If the company have such an interest in these lands that they can be sold by the State under her power of taxation, then the title is divested out of the Government without its consent, and the right to recover the money expended in the surveys is defeated. As the Government retains the legal title until the company or some one interested in the same grant or title shall pay these expenses, the State cannot levy taxes on the land, and under such levy sell and make a title which might in any event defeat this right of the Federal Government reserved in the Act by which the inchoate grant was made."

Shortly after the decision in this case, and after the Court had in Union Pac. R. R. Co. vs. McShane, 22 Wall. 444, stated that in other respects than that above referred to, the doctrine of the Prescott case was too broad, precisely

the same question was again presented to the Court in the case of Northern Pac. Rw. Co. vs. Traill Co., 115 U. S. 600, and Mr. Justice Miller again speaking for the Court, reconstrued his own words above referred to, in the following language (page 610): "It may be well to restate the grounds on which this decision (*i. e.*, Prescott case) rests."

"The United States made a magnificent grant to this company of lands equal in quantity to forty or fifty thousand square miles, an area as large as an average State of the Union. It thought proper to require of the grantee the payment of the cost of making the surveys necessary to the location and ascertainment of these lands. To secure the payment of these expenses, it decided to retain the legal title in its own hands until they were paid. The Government was, as to these costs, in the condition of a trustee in a conveyance to secure the payment of money. But if the land was liable to be sold for taxes due to State, territorial or county organizations, this security would be easily lost.

"No sale of land for taxes, no taxes can be assessed on any property, but by virtue of the sovereign authority in whose jurisdiction it is done. If not assessed by direct act of the Legislature itself, it must, to be valid, be done under authority of a law enacted by such Legislature. A valid sale, therefore, for taxes, being the highest exercise of sovereign power of the State, must carry the title to the property sold, and if it does not do this, it is because the assessment is void.

"*It follows that if the assessment of these taxes is valid and the proceedings well conducted, the sale confers a title paramount to all others, and thereby destroys the lien of the United States for the costs of surveying these lands. If, on the other hand, the sale would not confer such a title, it is because there exists no authority to make it.*

"At all events, the holder of the equitable title to the lands has a right to prevent a sale which would have the effect of impeding the United States in the assertion of her right to them until these costs are paid."

In still other cases, namely, Wisconsin Central Rw. Co. vs. Price Co. *(supra)* the same argument was made. That case was brought to the Supreme Court of the United States on a writ of error, addressed to the Supreme Court of the State of Wisconsin, and is reported below in 64 Wisconsin, 579. From the opinion of the Court, it appears that the Court not only followed precisely the same line of argument as that of the Maryland Court in this case, and of counsel and Courts in the other cases referred to, but the statute of Wisconsin, under which the assessment complained of was made, was even broader and more explicit in its terms than the similar Maryland Statute. On page 594, *et seq.*, the State Supreme Court said: "The statutes declare that 'taxes shall be levied upon all property in this State, except such as is exempted therefrom. The terms "real property" "real estate" and "lands," when used in this title, shall include, not only the land itself, but all buildings, fixtures, improvements, *rights and privileges* (the Court's italics) appertaining thereto. * * * The person holding the *contract or certificate* of sale of any real property, contracted to be sold by the State, but not conveyed, shall be deemed the owner for such purpose. (Secs. 1034, 1035, 1043 R. S.) There is no claim that any of the lands in question are exempt by reason of section 1038, or any statute of this State. The special exemption given by Ch. 21 Laws of 1877, the validity of which was sanctioned by this Court, expired before the levy and assessment in question. (Wisc. Cent. R. Co. vs. Taylor Co. 52 Wis. 37.) In the language of the Supreme Court of the United States, "Congress has not seen fit, either expressly or by implication, to impose any restriction upon the taxing power of the State. That subject was remitted, as under the circumstances it might well be, wholly to her wisdom and discretion." (22 Wall. 571, 572.) In the case last cited it was, in effect, held that "the equitable or inchoate title of the company to the residue of the lands" was capable of being mortgaged, and hence taxed. Ibid."

And in the course of argument of that case before this Court eminent counsel for the State cited numerous authorities to support the proposition that "every species of title to and interest in property, whether inchoate or complete, when vested in an individual, is taxable unless expressly exempted," (See Lawyers, Ed. Sup. Ct. Reps. Book 33, page 692), but again the argument was declared untenable.

As we have already stated, this is precisely the same argument advanced by the Court of Appeals of Maryland in this case. "We hold that the conditional interest or estate of the appellant in this land, subject to the right of the United States therein, constitutes property within the meaning of section 2 of article 81 of the Code, and is taxable by the State and city of Baltimore." (Record, page 29.)

So said the Supreme Court of Wisconsin in the case appealed from it, and so said eminent counsel in their arguments in support of the right to tax in all the cases cited. But this Court refused to admit the contention, and Mr. Justice Miller in the case of Northern Pac. Rw. Co. vs. Traill Co., plainly showed the reason why, when he pointed out, that the only true test of the assessment is to be found in the power to sell, that it is impossible to sell less than the whole, and to sell the whole necessarily requires a sale of the United States' interest, their "property," which is likewise impossible.

It may also be observed that the rule of law thus laid down led to abuses, which were recognized by Mr. Justice Miller in the case of Northern Pac. Rw. Co. vs. Traill Co. at pages 610-611: "We are aware of the use being made of this principal by the companies, who, having earned the lands, neglect to pay these costs in order to prevent taxation. The remedy lies with Congress and is of easy application. * * * The Courts can do no more than declare the law as it exists."

While it is not pertinent to the issue of law now involved, it may be remarked here that the same abuse does not exist in this case. For, whereas there the railway companies were

securing the exemption from taxation by withholding the just dues of the government, the plaintiff in error here maintains the exemption of this land by reason of the strict and faithful performance of all its obligations under the grant to it.

The case last referred to was decided December 7, 1885, and immediately thereafter by Act of July 10, 1886, Congress provided a remedy for the evil. This Act provided "that no lands granted to any railroad corporation by any Act of Congress shall be exempted from taxation by States, territories and municipal corporations on account of the lien of the United States upon the same for the costs of surveying, selecting and conveying the same, or because no patent has been issued; * * * Provided that any such land sold for taxes shall be taken by the purchaser subject to the lien for costs of surveying, collecting and conveying to be paid in such manner by the purchaser as the Secretary of the Interior may by rule provide, and to all liens of the United States, all mortgages of the United States, and all rights of the United States in respect of such lands; * * *"

U. S. Statutes at Large, Vol. 24, page 143.

Thus conferring upon the local authorities in the cases falling within its terms, what had not previously existed in any case, namely, a right to make sale of the interest of a private party in lands in which the United States also had an interest.

It may be remarked that the title of the Act is "*An Act to provide for taxation of railroad-grant lands and for other purposes,*" and that its scope, as disclosed both by its title and the necessarily limited effect of its provisions, restricts its application to railway land grants exclusively. There is nothing in it to extend its effect to the present case.

Since the passage of this Act, there have been cases in this Court in which the true meaning of the Act has been drawn in question, among them,

Central Pac. R. R. Co. vs. Nevada, 162 U. S. 512.
Northern Pac. Rw. Co. vs. Meyers, 172 U. S. 589.

But those cases turned only, in so far as they touch at all upon the question now at issue, upon the construction of the Act of Congress, and they, with the Act, serve to show all the more clearly that there existed no power in a State in any case to tax the interest of an individual in lands in which the United States also had an interest before the passage of the Act, and now necessarily such power only exists where the statute expressly gives it.

Cooley on Taxation (3d Ed.), pages 137-8-9.

And it may be asked, what would have been the need for this Act, if without it the partial interests of the railway companies in the lands granted were subject to taxation, without affecting the rights and estates of the United States therein, particularly, as it was expressly conceded in the later cases, above referred to, that the intent was to tax only the interests of railway companies, and not the land itself or the interest of the United States therein?

Can any other answer be made to this question than the conclusion to which our whole argument is addressed?

We submit that the conclusion is irresistible that even if the Statutes of Maryland do make provision for the assessment and taxation of interests or estates in land, as contradistinguished from the land itself, and that such an assessment has been made upon the interest or estate of the plaintiff in error in the land in question, both of which propositions we deny, nevertheless such assessment can not be lawfully made upon that interest or estate in this property, and is, therefore, void; and also that under all the decisions of this Court the plaintiff in error has a perfect legal right to maintain these proceedings to have such assessment declared null and void, for the protection of the interest of the United States in the land. (Nor. Pac. Rw. Co. vs. Traill Co., *supra*, at page 610.)

This disposes of our first and second assignments of error. The third and fourth rest upon somewhat different grounds. We will discuss them in order.

VI.

THE LAND IN QUESTION, WITH THE DRY DOCK CONSTRUCTED ON IT, IS A FEDERAL AGENCY, ACTUALLY USED BY THE UNITED STATES, IN THE EXERCISE OF ITS CONSTITUIONAL POWERS, AND HENCE IS NOT SUBJECT TO STATE TAXATION.

We have hitherto been considering the interest of the United States in this land from the standpoint of the law of real property, and disregarding, for the purposes of that portion of our argument, the nature of the interest of the United States. Thus we have to deal not merely with a right of reverter, coupled with certain rights of present user, but the nature of the conditions of the grant and the rights of user have a peculiar bearing upon the State's right of taxation. It is our contention that it is the effect of these peculiar conditions and provisions to constitute the land granted by Congress and the dry dock constructed on it, a "Federal agency," and that, irrespective altogether of questions of title and property, the land is not subject to State taxation for this reason.

The succinct head notes to the case of McCulloh vs. Maryland, state:

"If a certain means to carry into effect any of the powers, expressly given by the Constitution to the government of the Union, be an appropriate measure, not prohibited by the Constitution, the degree of its necessity is a question of legislative discretion and not of judicial cognizance;" and again, "The State governments have no right to tax any of the constitutional means employed by the government of the Union to execute its constitutional powers;" and Chief Justice Marshall, in the opinion, said at pages 409-410: "The government which has a right to do an act, and has imposed upon it the duty of performing that act, must, according to the dictates of reason, be allowed to select the means, and those who contend that it may not select any appropriate means, that one particular mode of effecting the object is excepted, take upon themselves the burden of estab-

lishing that exception." Consequently, there is no reason why Congress should not have made a contract, such as this, for the construction of a dry dock for the use of the government by a private party, which, when the use of the dry dock was not required by the government, should have the right to let it to other parties and to make such appropriate and not inconsistent use of the land, granted to it, as its business sagacity might suggest. There was nothing unconstitutional in this, we say. For if there were any such impediment, the grant would be void, and there would be nothing left of the right to tax.

McCulloh vs. Maryland, 4 Wheaton, 316.
Cooley's Constitutional Limitations (7th Ed.), at pages 45 and 678, *et seq.*
Cooley on Taxation (3d Ed.), at pages 129, etc.
Black on Tax Titles (1893), sections 5, 6, 7.

On the other hand, we submit that under these circumstances, it cannot be said that the effect of the Act of Congress, making the grant, was not to continue the use of the lands for public purposes, just as much as if they had been kept as part of the Fort McHenry tract, or as if a dry dock had been constructed on them at the public expense. In fact, on the last supposition the government could have had no greater right to use a dry dock, built at its own cost, than it has to use the one now on the land, built at the cost of the plaintiff in error. The words of the Act of Congress are: "The said Dry Dock Company shall be required to accord to the United States the right to the use forever of the said dry dock, at any time, for the prompt examination and repair of vessels belonging to the United States free from charge for docking," (Record, page 18), and failure to do so works an instant forfeiture of the whole estate of the plaintiff in error, and all its expenditures for the construction of the dry dock and its appurtenances, or the erection of other buildings on the land. Moreover, it is legally possible that the government may have used the dock 365

days in each of the 25 years since the grant was made, or may require its constant use at any time in the future.

Nay, the government has a positive advantage from the present arrangement, for it is under no expense for operation and maintenance.

The case of Northern Pac. Rw. Co. vs. Townsend, 190 U. S. 267, which we have already called to the Court's attention, dealt, as we pointed out, with a grant of lands for a railroad right of way, in which the United States had no right of present user, or other interest, save the implied right of reverter in case of abandonment or diversion to any other use, but certain incidents of the railway company's estate were described by this Court in language so applicable to the question at issue here, that we cannot refrain from quoting it. Said Mr. Justice White, at pages 271-2:

"This being the nature of the title to the land granted for the special purpose named, it is evident that to give such efficacy to a Statute of Limitations of a State as would operate to confer a permanent right of possession to any portion thereof upon an individual for his private use, would be to allow that to be done by indirection which could not be done directly; for, as said in Grand Trunk R. R. Co. vs. Richardson, 91 U. S. 454, 468, the railroad company * * * is not at liberty to alienate any part of it so as to interfere with the full exercise of the franchises granted." Nor can it be rightfully contended that the portion of the right of way appropriated was not necessary for the execution of the powers conferred by Congress, for, as said in Northern Pac. Rw. Co. vs. Smith, 171 U. S., 261, 275, speaking of the very grant under consideration: "By granting a right of way 400 feet in width, Congress must be understood to have conclusively determined that a strip of that width was necessary for a public work of such importance." * * *

"To repeat," continues the Court on page 272: "The right of way was given in order that the obligations to the

United States assumed in the acceptance of the Act might be performed, Congress having plainly manifested its intention that the title to and possession of, the right of way should continue in the original grantee, its successors and assigns, so long as the railroad was maintained, the possession by individuals of portions of the right of way cannot be treated, without overthrowing the Act of Congress, as forming the basis of an adverse possession which may ripen into a title good as against the railroad company."

Applying that language to this case, we think it must be admitted not only that the land was given in order that the obligations to the United States, assumed in the acceptance of the Act, namely, the construction, maintenance and operation of this dry dock, might be performed, but also that the very discharge of those obligations itself was designed to, and did in fact, constitute a lawful means of putting into operation certain powers, expressly conferred upon Congress by the Constitution, conspicuous among them the power "to provide and maintain a navy" (Constitution, Art. 1, Sec. 8, Clause 13), and that neither has any private party the right to divert this land directly or indirectly from the purpose to which it is put by Congress, namely, the execution of those obligations, nor has the State of Maryland any greater power to abridge or obstruct their execution in like manner, whether the diversion of the land be induced by the State of Maryland, in the exercise of its sovereign right of taxation, or of eminent domain, or of any other such right.

We submit, therefore, that this case falls strictly within the doctrine of McCulloh vs. Maryland.

See also—Van Brocklin vs. Tennessee (*supra*), and the cases therein cited.

Cooley's Constitutional Limitations (7th Ed.) pages 45 and 612, *et seq.*

It must be understood that no claim is made that the plaintiff in error, the corporation, is exempt from taxation by the

State of Maryland. The claim is not that it is a federal agency, in any sense. On the contrary, it is expressly stated in the Sixth Paragraph of the Agreement of Counsel (Record, page 20), that the plaintiff in error is assessed and pays taxes to the State of Maryland, just like any other Maryland corporation. But it does maintain that the United States not only have an interest or estate in the lands in question, constituting "property," but that this interest or estate consists of certain rights of user, certain duties and obligations *due by the land, in whosoever hands it may be*, which constitute the land itself, and the permanent and immovable improvements constructed on it, an instrumentality or agency of the Federal Government, used by it in the exercise of its constitutional powers.

Nor is it a case, we submit, that falls within the doctrine of the "Railroad Cases," and other decisions of this Court, in which corporations, created by Act of Congress in some cases, and likewise in some cases objects of its bounty, have claimed exemption from State taxation for themselves and all their property, real and personal, on the ground that through contracts to perform certain services for the Government they, the corporations themselves, have become governmental agencies, and that all their property necessary to the performance of their contracts with and obligations to the Government must perforce be exempt from taxation by the State in which such property may be found. Among such cases are

Thompson vs. Union Pac. R. R. Co., 9 Wall. 579.
Union Pac. R. R. Co. vs. Peniston, 18 Wall. 5.

These cases fall rather within that portion of the decision of McCulloh vs. Maryland, and the line of cases following it, which holds that the specific property of the Federal agent was not exempt from taxation, though the "agent" itself was.

McCulloh vs. Maryland, 4 Wheaton, at page 436.
Osborn vs. Bank, 9 Wheaton, 867.

In the "Railroad Cases" referred to, the corporations were the Federal Agents, and it was held that they and their franchises and operations were exempt from taxation, though their property was not. In this case, the corporation makes no claim to be itself a "Federal Agent," and consequently exempt from taxation, but, we maintain, the land is such an agency, and it is consequently exempt. In other words, the plaintiff in error appears in this case not to protect itself, but this land, from taxation by the State of Maryland, on the ground that the land, not the corporation, is a Federal Agency, and of necessity exempt from State taxation.

VII.

THE TRACT OF LAND, OF WHICH THE LAND IN QUESTION IS A PART, WAS ACQUIRED BY THE UNITED STATES FROM THE OWNERS OF THE SOIL, WITH THE EXPRESS AND UNCONDITIONAL CONSENT OF THE STATE OF MARYLAND. CONSEQUENTLY, CONGRESS IS VESTED WITH EXCLUSIVE LEGISLATIVE JURISDICTION OVER IT, AND THE STATE OF MARYLAND HAS NO LEGISLATIVE OR OTHER POWER OVER IT, EXCEPT AS EXPRESSLY PERMITTED BY CONGRESS.

In our statement of the facts we have already called it to the Court's attention, that the whole Fort McHenry tract was acquired from the owners of the soil with the consent of the Legislature of Maryland, contained in the Joint Resolution adopted at its November Session, 1793. (Record, pages 18 and 19.)

The acquisition of the land in this manner for a public purpose is tantamount to a cession of the lands to the United States, and by virtue of the provisions of article 1, section 8, clause 17, of the Constitution, immediately upon such cession all authority of the State over the land is absolutely terminated, and it becomes subject only to the jurisdiction of Congress.

The decisions which hold that a State would have no right independently of a reservation of power in the act of cession, to try a person accused of a crime committed within the boundaries of such a tract so acquired, show to

how great a length the effect of such a cession has been held to reach.

U. S. vs. Cornell, 2 Mason, 60.
Commonwealth vs. Glary, 8 Mass. 72.
Fort Leavenworth R. R. Co. vs. Lowe, 114 U. S. 525.
R. R. Co. vs. McGlenn, 114 U. S. 542.
Bannon vs. Burns, 30 Fed. Rep. 892.
Martin vs. House, 39 Fed. Rep. 694.

Though, where the State's consent has been given upon condition, and in certain cases falling under Acts of Congress, conferring special jurisdiction on the states, a limitation of the rule has been permitted.

See—Act of March 5, 1795, Rev. Stats., sec. 4662.
Act of March 5, 1903, 32 Stat. at Large, 1220.

But on the contrary, by section 5371 of the Revised Statutes, it is expressly provided that the same acts, committed on a tract of land, held by the United States under cession, shall be crimes of the same degree and character against the United States, as they would have been against the State, if such land had never been ceded, and the pains and penalties of the State laws are adopted and imposed—as, however, the respective punishments inflicted by the United States—not by the State.

In this case, however, the consent of the Legislature of Maryland was given without conditions or restrictions, and the whole Fort McHenry tract from the date of its acquisition onward has been under the exclusive jurisdiction of the United States, and the State of Maryland has no power over the lands at all, legislative or otherwise.

It is needless to say that there is no Act of Congress conferring power upon the State to tax private or other property within such an area, to exercise the right of eminent domain, or other like sovereign power—

C. P. Chauvenet vs. County Commissioners, 3 Md. 259,

though it was held in the case of the Fort Leavenworth R. R. Co. vs. Lowe, *supra*, that when the State had expressly reserved the right to tax private property, within the ceded territory, such a reservation was valid.

It must therefore be concluded that in this case the State of Maryland has no power to tax the land, or any interest in it, or to exercise any other kind of jurisdiction over it, so long as the United States retains its exclusive power and jurisdiction over it. This exclusive jurisdiction would necessarily continue as long as such lands are being put to a public use, and would undoubtedly terminate, if they were in terms ceded back to the State by Congress. We also believe, that if Congress were, by gift or sale, to grant all the interest of the United States in them to private parties, without restriction or encumbrance, then, by reason of the fact that they were no longer being put to the purpose of their acquisition, *i. e.*, some public use, there would be held to be a recession by necessary implication, and all the jurisdiction of the State and its powers of legislation, and otherwise, over the ceded territory would revive. But in order to accomplish such a result, we submit, the suppositious private grant of the land by Congress must be absolute and unrestricted, and the Government must part with all its interest in it.

If a different rule were applied in this case, for instance, and if it be contended that the land here is subject under the present grant to the legislative power and other jurisdiction of the State of Maryland, because it is in the possession of the plaintiff of error, then it would necessarily follow that the exclusive power and jurisdiction of Congress conferred by the Constitution over lands acquired in such manner as this, could rise and fall, could divest and revest, upon an implication of law, without any express act of the United States or the State, in which they lie, which according to our view, is utterly impossible.

Consequently, we maintain, when land has once been ceded to the United States by a state, and its exclusive jurisdiction

over it called into being, that cession and exclusive jurisdiction can not be held to have terminated, so long as the United States have any interest, right or estate in the land, so ceded, certainly not while the United States is vested with a right of reverter, coupled with a beneficial right of present user, as in this case. If we be right in this, it follows that the State of Maryland has no jurisdiction or power whatsoever over the land in question, and, *a fortiori*, no power to assess and tax the land, or any estate in it, or to otherwise appropriate it or any part of it to the public uses of the State, and the assessment is void for this reason.

VIII.

In conclusion, we beg to call to the Court's attention the fact that although 23 years had elapsed, 1879 to 1902, between the grant in this case and the notice of the proposed assessment, now complained of, no effort had in all that time been made to tax the land, or the estate of the plaintiff in error in it, and, as the Court of Appeals recognizes in the case of Baltimore vs. Johnston, 96 Md. at page 746, such a lapse of time, acquiesced in by the State officers, though it may not be controlling, is none the less to be given full weight in determining whether any given property is subject to taxation, and should, we submit, put on the State the burden of proving it not to be exempt, as its sworn officers had for so long a period treated it.

For the errors, contained in the final judgment of the Court of Appeals of Maryland, the Court of last resort of that State, set forth in the assignment of errors, and contended for in this argument, we respectfully submit that the assessment complained of must be held void, and the judgment of the Court of Appeals of Maryland reversed.

ARCHIBALD H. TAYLOR,
E. P. KEECH, JR.,
LEON E. GREENBAUM,
Counsel for Plaintiff in Error.

IN THE

Supreme Court of the United States.

OCTOBER TERM 1904.

No. 32.

THE BALTIMORE SHIPBUILDING AND DRY DOCK COMPANY OF BALTIMORE CITY,
Plaintiff in Error,

vs.

THE MAYOR AND CITY COUNCIL OF BALTIMORE, ET AL, *Defendants in Error.*

IN ERROR TO THE COURT OF APPEALS OF THE STATE OF MARYLAND.

BRIEF ON BEHALF OF THE DEFENDANTS IN ERROR.

W. CABELL BRUCE,
City Solicitor.
EDGAR ALLAN POE,
Deputy City Solicitor,
Attorneys for Defendants in Error.

IN THE

Supreme Court of the United States.

OCTOBER TERM 1904.

No. 39.

THE BALTIMORE SHIPBUILDING AND DRY DOCK COMPANY OF BALTIMORE CITY,
Plaintiff in Error,

vs.

THE MAYOR AND CITY COUNCIL OF BALTIMORE ET AL., *Defendants in Error.*

IN ERROR TO THE COURT OF APPEALS OF THE STATE OF MARYLAND.

BRIEF ON BEHALF OF THE DEFENDANTS IN ERROR.

STATEMENT.

This appeal involves the question of the right to assess, for purposes of State and municipal taxation, the interest of the Plaintiff in Error in a certain lot of ground and dry dock situated at Locust Point, within the city of Baltimore.

The land in question was formerly the property of the United States Government, being part of the Government Reservation known as Fort McHenry. The Plaintiff in Error acquired it by virtue of an Act of Congress, approved June 19, 1878, entitled "An Act granting a site for a dry dock in the city of Baltimore upon certain conditions," which Act provided as follows (Record, pages 17 and 18):

> "That the Secretary of War be and he is hereby directed to convey to the Baltimore Dry Dock Company of Baltimore city, a body corporate, created under the laws of the State of Maryland, for the consideration hereinafter described, so much of the land belonging to the United States in said city, known as the Fort McHenry tract, as lies between the northwestern boundary line of the said tract and a line parallel thereto, and distant four hundred and fifty feet therefrom, and between a line two hundred and fifty feet from the northern side of Fort avenue (a street or avenue of said city extended), and parallel thereto, and the northwest branch of the Patapsco river.
>
> "Sec 2. That in consideration of the said conveyance, and as the condition upon—the same is made, the said dry dock company shall be required to construct upon the land conveyed as aforesaid, within two years from the date of the conveyance, an efficient 'Simpson's Improved Dry Dock' four hundred and fifty feet in length, and to accord to the United States the right to the use forever of the said dry dock at any time for the prompt examination and repair of vessels belonging to the United States, free from charge for docking; and if at any time said property hereby conveyed shall be diverted to any other use than that herein named, or if the said dry dock shall be at any time unfit for use for a period of six months or more, the property hereby conveyed, with all its privileges and appurtenances, shall revert to and become the absolute property of the United States."

In accordance with this Act of Congress, a deed was duly executed on March 26, 1879, by the Secretary of War, conveying to the Plaintiff in Error the said property, upon the conditions set out in said Act. The Plaintiff in Error accepted the grant; constructed upon the land conveyed, within two years from the date of the conveyance, an efficient "Simpson's Improved Dry Dock" four hundred and fifty feet in length or over, and ever since that time has accorded to the United States the right to use said dry dock at any time for the prompt examination and repair of vessels belonging to the United States, free from charge for docking. Moreover, the said property has never been diverted to any other use than that of a dry dock, and the said dry dock has at no time been unfit for use for a period of six months or more.

The Appeal Tax Court of Baltimore City, on the 30th day of September, 1902, assessed the interest of the Plaintiff in Error in said land and dry dock, for the purpose of taxation, at seventy-five thousand dollars ($75,000), whereupon the Plaintiff in Error appealed to the Baltimore City Court. On this appeal, while the amount of the assessment was reduced from seventy-five thousand dollars ($75,000) to seventy thousand, six hundred and fifty dollars ($70,650), the Court held that the interest of the Plaintiff in Error in the said property was lawfully subject to taxation. Thereupon, the Plaintiff in Error again appealed to the Court of Appeals of Maryland. The decision of that Court being against it, it now asks this Honorable Court for relief.

By the Defendants in Error it will be contended:

1. That the interest of the Plaintiff in Error in the land and dry dock in question is not exempt from assessment, for purposes of State and municipal taxation, by reason of the fact that, under section 2 of the Act of Congress above set out, there is a possibility that said land and dry dock may revert to, and become the absolute property of, the United States.

2. That the interest of the Plaintiff in Error in the land and dry dock in question is not exempt from assessment, for pur-

poses of State and municipal taxation, by reason of the fact that, under section 2 of the said Act of Congress, the said dry dock, with its equipments, may be availed of by the United States Government for the prompt examination and repair of its vessels, free from charge for docking.

ARGUMENT.

I.

The interest of the Plaintiff in Error in the land and dry dock in question is not exempt from assessment, for purposes of State and municipal taxation, by reason of the fact that, under section 2 of the Act of Congress above set out, there is a possibility that said land and dry dock may revert to, and become the absolute property of, the United States.

We call the Court's attention to the three concluding paragraphs of the decision of the Court of Appeals of Maryland, set out on page 29 of the Record. These paragraphs are as follows:

> "Of course if it should ever become necessary for the State or city to sell this property of the appellant for the non-payment of taxes, nothing more could be sold than its conditional estate in the land and the permanent improvements thereon, subject to all of the rights of the United States therein."
>
> "It has been the custom and policy of this State, when it became necessary to sell for non-payment of taxes land in which several parties held different estates *all of which were subject to assessment and taxation*, to sell the fee simple estate in exercise of its sovereign power, Cooper vs. Holms, 71 Md. 720; Textor vs. Shipley, 86 Md. 424, but it is manifest that the sovereign power of the State does not embrace within its operation the right or estate of the Federal Government in the land now in question."
>
> "We hold that the conditional interest or estate of the appellant in this land, subject to the rights of the United States therein, constitutes property within the meaning of

section 2 of Article 81 of the Code, and is taxable by the State and the City of Baltimore. In view of the fact that the situation of the title to the land is such that the absolute fee therein cannot be taxed, and therefore could not be sold for non-payment of taxes, the assessment books should be so modified as to show that the estate assessed is subject to the right and interest of the United States in the land and improvements."

The Court of Appeals of Maryland has, therefore, held that it is simply the conditional interest or estate of the Plaintiff in Error in the land and dry dock, which is assessed and taxed by the State and city of Baltimore, and that, if it should ever become necessary for the State or city to sell the property of the Appellant in Error for the non-payment of taxes, nothing more could be sold than its conditional estate in the land and the permanent improvements thereon, subject to all of the rights of the United States therein.

It is the settled law of the State of Maryland that taxes are not levied on things, but on the owner of things; the value of the things owned merely fixing the measure of the owner's liability to contribute in taxes towards the support of the government.

Monticello Company vs. Baltimore City, 90 Md. 425.

Carstairs vs. Cochran, 95 Md. 500.

It is, therefore, manifest that the taxes have been levied, not on the land of the Plaintiff in Error, but on the Plaintiff in Error as the owner of the land; the value of the Plaintiff in Error's interest in the land being ascertained in order to furnish a basis upon which to compute the amount of taxes that should be paid.

Nor is there anything novel in the proposition that, in order to enforce the payment of taxes, a less interest than the absolute fee in the land can be sold. Article 50, section 50, of the Baltimore City Code provides as follows:

"When any lot or lots of ground, improved or unimproved, may be chargeable with the payment of taxes, and such lot or lots are subject to ground rent or lease for a term of years, renewable forever, it shall be the duty of the collector, in the sale of such lots for the non-payment of taxes, to sell the leasehold interest only, with the improvements erected thereon, if any; provided, however, that in case the said leasehold interest and improvements shall not sell for the amount necessary to pay the taxes due on said lots, together with the lawful costs, charges and interest as aforesaid, then the said collector shall sell the whole fee simple of such lots; and provided further, that the provisions of this section shall not apply in cases where the books of the city do not disclose the fact that the lot or lots are on lease as aforesaid, or unless the collector shall have actual notice of such lease prior to the sale thereof."

The provisions of that section have been acted on in Baltimore city for more than the last twenty-five years, and the validity of said provisions has been recognized by the Court of Appeals of Maryland.

Mayor and City Council vs. Whittington, 78 Md. 232.

Moreover, it is respectfully submitted that the decision of the Court of Appeals of Maryland in the case at bar is binding upon this Honorable Court.

In Carstairs vs. Cochran, 193 U. S., page 10, which was an appeal from the Court of Appeals of Maryland, this Court said:

"A State has the undoubted power to tax private property having a situs within its territorial limits, and may require the party in possession of the property to pay the taxes thereon. Unless restrained by provisions of the Federal Constitution, the power of the State as to the mode, form and extent of taxation is unlimited, where the subjects to which it applies are within her jurisdiction."

And, again, in Northern Pacific Railway Compay vs. Townsend, 190 U. S., page 270:

> "The courts of the United States will construe the grants of the general government without reference to the rules of construction adopted by the States for their grants; but whatever incidents or rights attach to the ownership of property conveyed by the government will be determined by the States, subject to the condition that their rules do not impair the efficacy of the grants or the use and enjoyment of the property by the grantee."

The property in question has a situs within the territorial limits of Baltimore city, and the plaintiff in error has been in full possession and enjoyment of said property for over twenty-five years, under a legal title, during that entire period, falling within the definition of a "base fee," or a fee simple title defeasible upon a condition subsequent. As such owner, its interest in said property has been assessed for taxes. No attempt has been made to assess or to tax the contingent interest of the United States Government.

The Act of Congress in question, and the deed executed by the Secretary of War in pursuance of said Act, made no attempt to exempt from taxation the interest acquired by the Plaintiff in Error, and, by the imposition of the tax, there manifestly has been no impairment of the efficiency of the grant, or the use and enjoyment of the property by the grantee.

Union Pacific R. R. vs. Peniston, 18 Wallace, 5.

Thus none of the limitations upon the State's power to tax, as set out in either Carstairs vs. Cochran, or Northern Pacific Railroad Company vs. Townsend *(supra)*, being present here, and the Court of Appeals of Maryland having determined the mode, form and extent of the tax upon the interest of the Plaintiff in Error to be lawful, there is no question left open for this Court to pass upon.

The Plaintiff in Error being in possession and full enjoyment of very valuable property, some cogent reason must be shown

by it why its said property should not bear its fair proportion of taxation for the benefit of the State and city governments. It seeks to find this reason in the decisions of this Court, in what are known as the "Land Grant" cases, to wit:

Kansas Pacific R. R. Co. vs. Prescott, 16 Wallace, 603.

Union Pacific R. R. Co. vs. McShane, 22 Wallace, 444.

Northern Pacific R. R. Co. vs. Traill County, 115 U. S. 600.

No attempt will be made to go fully into those cases. This Court has summed them up in 172 U. S., page 598, in the case of the Northern Pacific Railway vs. Myers, where the Court said, as follows:

> "In Railway Company vs. Prescott, 16 Wall. 603; Railway Company vs. McShane, 22 Wal. 444, and Northern Pacific Railroad Company vs. Traill County, 115 U. S. 600, it was decided that lands sold by the United States might be taxed before they had parted with the legal title by issuing a patent; but this principle, it was said, must be understood to be applicable only to cases where the right to the patent was complete and the equitable title was fully vested in the party without anything more to be paid or any act to be done going to the foundation of his right. In the first case the Court said two acts remained to be done which might wholly defeat the right to the patent: (1) the payment of the cost of surveying; (2) a right of pre-emption which would accrue if the company did not dispose of the lands within a certain time. The dependency of the right of taxation on the first condition was affirmed with the principle announced in Railway Company vs. McShane. The dependency of the right of taxation on the second ground was expressly overruled."

Manifestly there is nothing said there in conflict with the contention now being made by the Defendants in Error. If it

is lawful for a State to levy a tax where the legal title remains in the United States, provided the equitable title has fully vested in the corporation, it is surely lawful for the State of Maryland and the city of Baltimore to levy a tax where both the legal and equitable titles are vested in the Plaintiff in Error. If the right of pre-emption, which would accrue if the railroad company did not dispose of the lands within a certain time, did not defeat the right to tax, certainly the possibility that the land and dry dock in question might revert to the United States should not defeat the right to tax.

Again, in Northern Pacific Railway vs. Myers (*supra*), page 598, the Court said, referring to the McShane case, the Prescott case and the Traill county case:

> "Embarrassment to the title of the United States by the sale of the lands for taxes seems to have been the concern and basis of those cases."

Here, under the express ruling of the Maryland Court of Appeals, no embarrassment to the title of the United States can possibly arise; hence, the reason for the decisions in the above-mentioned cases does not exist in this case. In addition, in the Myers case, it was conceded that the interest of the railroad company in the lands was subject to taxation, the point insisted upon being that the lands themselves could not be taxed. As already shown in the case at bar, it is only the interest of the Plaintiff in Error in the land and dry dock that has been assessed for purposes of taxation, which thus brings it within the *concessum* in the Myers case.

Finally, we call the Court's attention to the fact that in Central Pacific Railroad Company vs. Nevada, 162 U. S., 512, and in Northern Pacific Railway vs. Myers, 172 U. S., 589, it was held that the possessory claim of the railroad company to Government lands lying within a State was subject to taxation by the State notwithstanding the fact that the lands might thereafter be determined to be mineral lands, and for that reason excluded from the operation of the grant from the

United States to the railroad company. If the uncertainty as to the character of the lands, whether mineral or not, does not defeat the right to tax, the possibility of reverter to the United States should not have that effect in this case, so long as the property is still being held, enjoyed and possessed by the Plaintiff in Error. As was said by this Court in Wisconsin Railroad Company vs. Price Company, 133 U. S., 496, "he who has the right to property and is not excluded from its enjoyment shall not be permitted to use the legal title of the Government to avoid his just share of State taxation."

II.

The interest of the Plaintiff in Error in the land and dry dock in question is not exempt from assessment, for purposes of State and municipal taxation, by reason of the fact that, under section 2 of the said Act of Congress, the said dry dock with its equipments, may be availed of by the United States Government for the prompt examination and repair of its vessels, free from charge for docking.

It is respectfully contended that the correctness of this proposition is no longer open to question. The Appellant in Error claims that the dock, with its equipments, is in effect an agency of the government, and as such not subject to taxation by the State. It is settled, however, by Thompson vs. Union Pacific Railroad Company, 9 Wallace, 579, and Union Pacific Railroad Company vs. Peniston, 18 Wallace, 5, that the principle of exemption from taxation of governmental agencies does not apply to the property of individuals or corporations which is not in the exclusive use, or under the exclusive control of the government, although the latter may have a fixed right to a preference in the use of such property when occasion may require.

In the former case it was held that the property of the railroad was liable to State taxation, although the road formed part of a system of roads constructed under the direction and authority of Congress, and although it was bound to perform certain duties for the Government, and ultimately to pay to it

a fixed percentage of its revenue, and, in addition, had mortgaged its property to the United States.

In the latter case it was again held that the property of the railroad company was liable to State taxation, although the road was to some extent an agent of the General Government, designed to be employed, and actually employed, in the legitimate service of the Government, both military and postal, the Court stating, on page 36, as follows:

> "It is, therefore, manifest that exemption of Federal agencies from State taxation is not dependent upon the nature of the agents, or upon the mode of their constitution, or upon the fact that they are agents, but upon the effect of the tax, that is, upon the question whether the tax does in truth deprive them of power to serve the Government as they were intended to serve it, or does hinder the efficient exercise of their power. A tax upon their property has no such necessary effect."

It is not claimed in this case that the effect of the tax is to deprive the Plaintiff in Error of the power to serve the Government, or to hinder it from the efficient exercise of its power.

As a complete answer to the contention of the Plaintiff in Error, we simply reproduce what this Court said in Thompson vs. Union Pacific Railway Company, 9 Wallace, pp. 590 to 592:

> "But we are not aware of any case in which real estate or other property of a corporation, not organized under an Act of Congress, has been held to be exempt, in the absence of express legislation to that effect, from its contribution in common with other property to the general expenditure for the common benefit, because of the employment of the corporation in the service of the Government:
>
> "We do not doubt the propriety or necessity under the Constitution of maintaining the supremacy of the General Government within its constitutional sphere. We fully recognize the soundness of the doctrine that no State has the right to tax the means employed by the Government

of the United States, for the execution of its powers. But we think there is a clear distinction between the means employed by the Government, and the property of the agents employed by the Government. Taxation of the agency is taxation of the means. Taxation of the property of the agent is not always or generally taxation of the means. No one questions that the power to tax all property, business and persons, within their respective limits is original in the States, and has never been surrendered. It cannot be so used indeed, as to defeat or hinder the operations of the National Government; but it will be safe to conclude in general in reference to persons and such corporations employed in Government service, that *when Congress has not interposed to protect their property from such taxation, such taxation is not obnoxious to that objection.* We perceive no limits to the principle of exemption which the complainants seek to establish. It would remove from the reach of State taxation all the property of every agent of the Government. Every corporation engaged in the transportation of mails or of Government property of any description, by land or water, or in supplying materials for the use of the Government or in performing any service of whatever kind, might claim the benefit of the exemption. * * *

We are unable to find in the Constitution any warrant for the exemption from State taxation claimed in behalf of the complainants, and must, therefore, answer the question certified to us in the affirmative."

Upon the whole case, it is respectfully submitted that the judgment of the Court of Appeals of Maryland should be affirmed.

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Attorneys for Defendants in Error.

Supreme Court of the United States.

No. 39.—October Term, 1904.

Baltimore Shipbuilding and Dry Dock Company of Baltimore City, Plaintiff in Error, *vs.* The Mayor and City Council of Baltimore et al. } In Error to the Court of Appeals of the State of Maryland.

[November 28, 1904.]

Mr. Justice Holmes delivered the opinion of the Court.

This is a writ of error to the Court of Appeals of the State of Maryland, brought to reverse a judgment sustaining a tax upon certain land. The plaintiff in error filed a petition and appeal from an assessment by the appeal tax court of Baltimore in the Baltimore City Court, alleging that its land was not subject to taxation, and, if subject, was taxed too high. The City Court reduced the tax but held the land liable, and its judgment was affirmed by the Court of Appeals. 97 Md. 97. The land in question formerly belonged to the United States, being part of the property known as Fort McHenry, and is admitted not to have been taxable at that time. Under an act of Congress of June 19, 1878, 20 Stats. 167, it was conveyed to the plaintiff in error on March 26, 1879. By the terms of the deed, following the requirements of the act, the consideration of the conveyance and the condition upon which it was made was that the Dock Company should construct a dry dock upon the land as specified, which it did, and that it should "accord to the United States the right to the use forever of the said dry dock at any time for the prompt examination and repair of vessels belonging to the United States free from charge for docking and that if at any time the property hereby conveyed shall be diverted to any other use that that herein named or if the said dry dock shall be at any time unfit for use for a period of six months or more, the property hereby conveyed with all its privileges and appurtenances shall revert to and become the absolute property of the United States." This condition is relied upon as still keeping the land outside the taxing power of the State.

It is argued that the United States has such an interest in the land as to prevent the tax, and also that the land is an agency of the Government by the terms of the grant. It is noted that this tax originally was levied upon the land, not upon the Dock Company's interest, and although the language of the final judgment was "the property concerned in the appeal in this case" that is supposed to mean the same thing.

We will deal with the argument drawn from the last consideration first. It is true that commonly taxes on land create a lien paramount to all interests, and that a tax sale often has been said to extinguish all titles and to start a new one. *Hefner* v. *Northwestern Mutual Life Ins. Co.*, 123 U. S.

747, 751. *Textor* v. *Shipley*, 86 Md. 424, 438. *Emery* v. *Boston Terminal Co.*, 178 Mass. 172, 184. Perhaps it was assumed that this always was the effect of tax sales in *Northern Pacific Railroad* v. *Naill Co.*, 115 U. S. 600. But it needs no argument to show that a State may do less. It may tax a life estate to one and a remainder to another, and sell only the interest of the party making default. With regard to what the State of Maryland has done and what are the purport and attempted effect of the tax in this case, we follow the Court of Appeals. That court treated the tax and the lien as going only to the Dock Company's interest in the land, although probably by an oversight it neglected to modify the judgment according to its own suggestion so as to show the fact. That only the company's interest was taxed is shown by the reduction of the assessment on account of the condition. Of course it does not matter what form of words the judgment employs, when its meaning is thus declared by the court having the matter under its control.

In the next place, as to the interest of the United States in the land. This is a mere condition subsequent. There is no easement or present right *in rem*. The obligation to keep up the dock and to allow the United States to use it carries active duties and is purely personal. The property is subject to forfeiture, it is true, if the obligation is not fulfilled. But it is only by forfeiture that the rights of the United States can be enforced against the *res*. It would be a very harsh doctrine that would deny the right of the States to tax lands because of a mere possibility that they might lapse to the United States. The contrary is the law. The condition cannot be extinguished by the State, but the fee is in the Dock Company, and that can be taxed and, if necessary, sold, subject to the condition. See *Northern Pacific Ry.* v. *Myers*, 172 U. S. 589, 598. *Maish* v. *Arizona*, 164 U. S. 599, 607–609. *Central Pacific R. R.* v. *Nevada*, 162 U. S. 512, 525. The title of the Dock Company was not inalienable, as that of the railroad was held to be in *Northern Pacific Ry.* v. *Townsend*, 190 U. S. 267.

Finally, we are of opinion that the land is not exempt as an agency of the United States. The Dock Company disclaimed that position for itself as a corporation, but asserts it for the land. The position is answered technically, perhaps, by what we have said already. The United States has no present right to the land but merely a personal claim against the corporation, reinforced by a condition. But, furthermore, it seems to us extravagant to say that an independent private corporation for gain, created by a State, is exempt from State taxation, either in its corporate person, or its property, because it is employed by the United States, even if the work for which it is employed is important and takes much of its time. *Thompson* v. *Union Pacific Ry.*, 9 Wall. 579. *Union Pacific Railroad* v. *Peniston*, 18 Wall. 5.

Judgment affirmed.